Report of Freedom of Religion/ Belief in Indonesia 2008

SIDING AND ACTING INTOLERANTLY

Intolerance by Society and Restriction by the State in Freedom of Religion/ Belief in Indonesia

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Intolerance by Society and Restriction by the State inFreedom of Religion/Belief in Indonesia

Report of Freedom of Religion/ Belief in Indonesia 2008
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SUMMARY EXECUTIVE

SETARA Institute is an organization founded by a number of people who have concerns in realizing an equal society. One of the concerned issues of this organization is promoting the assurance of freedom of religion/belief and continuously encouraging the State to fulfill the rights to freedom of religion/ belief in Indonesia. The yearly report is an effort from SETARA Institute to inform and promote to public latest and regular condition of freedom of religion/belief in Indonesia.

The 2008 yearly report is the second report published by SETARA Institute, in which describes the monitoring results of freedom of religion/belief. The publication is expected to be noted by many parties, particularly the State, that in human rights context, have obligations to respect, promote and fulfill human rights.

The monitoring and publishing yearly report are aimed [1] to document and publish the facts on violations and breakthroughs/ progresses of assurance of freedom of religion/

belief in Indonesia; [2] to encourage the State to fulfill its assurance of freedom of religion/belief, including revising various products of legislation which bound the freedom of religion/ belief and recovery of victim's rights; and [3] to strengthen civil society's networks and to expand the constituency to participate in promoting the freedom of religion/belief.

The yearly report is written based on data of monitoring results of 10 regions: North Sumatra, South Sumatra, West Sumatra, Jakarta, Banten, West Java, Central Java and Yogyakarta, South Sulawesi, South Kalimantan, and West Nusa Tenggara.

The monitoring is using the human rights parameter, particularly International Covenant on the Civil and Political Rights, which has been ratified by Indonesia by Law No. 12/2005. Another parameter used is Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, as pronounced in the Resolution of UN General Assembly No. 36/55 on November 25, 1981.

FINDINGS

In 2008, SETARA Institute records 367 violations to freedom of religion/belief in 265 incidents. Most of the incidents happened in June (103 incidents). Last June was the month when the calls for and prosecutions to Ahmadiyah escalated highly, both as the call to the government to issue Presidential Decree on the Dismissal of Ahmadiyah and as the serious impact of Joint Ministerial Letter (SKB) on the Restriction of Ahmadiyah.

The incidents of violations to freedom of religion/belief are

mounted in June 2008. If the incidents related to Ahmadiyah are taken out from the account, the amount of incidents of violations to freedom of religion/belief is actually quiet moderate. This fact shows that the incidents of violations to freedom of religion/ belief in 2008 were mostly triggered by the Joint Ministerial Letter on the Restriction of Ahmadiyah.

As seen in areas in which incidents of violations occur, three provinces shows high number of violations compared with others: West Java (73 incidents), West Sumatra (56 incidents) and Jakarta (45 incidents). These three provinces have low rate of tolerance as well as high potential of religious conflict.

From 367 violation acts of freedom of religion/belief, there are 188 violations which involve the State as the actor, by commission 99 acts as well as by omission 89 acts. For violations in which the State is the actor, the legal responsibility is the human rights law, which binds the State due to ratification of various covenants and conventions. State institutions which make the most violations are police (121), Regent/Mayor (28), court (26), and Local Parliament (26).

From 367 violations, 88 of them are criminal acts conducted by citizens and 91 are intolerance by individuals/ members of society. The category of crime and intolerance are forms of violation to criminal laws in which the responsibility lies on the individuals as the legal subjects. The perpetrators of violations in this category are, as recorded, MUI (42), FPI (27), FUI, KPSI, MMI (each 12), other Islamic mass organizations (55), unidentified groups (59), and individuals (20).

From the 367 violations, until the beginning of 2009, the

State has not taken any action, other than tries Rizieq Shihab and Munarman on the incident of June 1 at Monas.

The violations of freedom of religion/belief in 2008 mostly addressed to the followers of Ahmadiyah (238), as in becoming the victims of intolerance, repression by the State, by omission, and crimes done by citizens/groups in society. The number is followed by individuals (48), followers of other religion/belief (15), and Christians (15).

In 2008, the freedom of religion/belief has also been failed to regain complete recognition from the constitution due to the bias in constitutional interpretations which are still preserved by the political elites of the State. At the same time, the State produces policies which legalize the uniformity acts using religious disgrace and defamation as the reason. In legislations, other than existing restrictive legislations and policies, in 2008 there are 1 legislation issued based on morality and religion (Law No. 42/2008 on Pornography) and 3 policies which restrict and reduce the assurance of freedom of religion/belief: Joint Ministerial Decree on the Restriction of Ahmadiyah, Decision Letter of South Sumatra Governor on the Prohibition of Ahmadiyah, and Recommendation of Monitoring Body of Religion and Belief (Pakem) of Padang Municipality to the Mayor of Padang dated on November 20, 2008 on the Prohibition of and Taking Down of Ahmadiyah Board in Padang Municipality.

In relation with local regulations which are discriminative to gender and contradicts human rights, the central government, particularly Department of Law and Human Rights which has the preventive authority, Department of Home Affairs which

has the evaluative and repressive authority, and Supreme Court which has the repressive authority through judicial review, has not been able to create an effective mechanism to ensure the local regulations are consistent with higher legislations, including with the constitution.

Constitutional problems related to the freedom of religion/ belief are triggered by and derived from the interpretation bias of Article 29 (2) of the constitution, and limitation of freedom assurance in Article 28J (2), which is not common in the human rights framework. The State's bias interpretation and the uncommon limitation have become the essential trigger and the formal legalization to all incidents of violations to freedom of religion/belief in Indonesia.

From the findings of monitoring, there is no significant change in relation with legislations/policies which strengthens the assurance of freedom of religion/belief. There are only two statements by President Susilo Bambang Yudhoyono which are able to be noted as significant declarative breakthroughs to the strengthening of assurance of freedom of religion/belief: first, his statement and commitment to complete the case trial of attack by Islamic groups against AKKBB, June 1, at Monas; and second, his statement of recognition to diversity and intention to keep it, as stated in the Christmas Celebration 2008.

The report shows that the rate of intolerance in the society as well as in the State body, through the State apparatuses, is getting stronger; on the other hand, the tolerance is getting weaker. The indicators are the increase of numbers of incidents of and violations to freedom of religion/belief, the State's political

choice on the restriction of religious sects, and the dispersion of actors that are expanding. As in 2007 perpetrators of crimes were limited to a few numbers of radical Islamic organization, in 2008 the perpetrators are more enlarged to individuals or groups without identity that sporadically do crimes and intolerance.

Other than the anxiety of worsening condition of freedom of religion/belief, the growth and strengthening of civil society organizations promoting freedom of religion/belief are strengthening the defenders of freedom of religion/belief.

The State actually has the authority and competence to ensure the freedom of religion/belief. The minus capacity of the government to act firmly and ensure this freedom has hauled the State to side and to act intolerantly and discriminative by making restrictions via a number of policies issued. The ambiguity of the State's role in ensuring the freedom of religion/belief has also showed that the State's elites have and will always undertake religious politicization, in which every position it does and act it takes will depend on how great the image will be polished and how great the support will be gained. In the middle of political contestation of General Election 2009, all parties will choose issues that are less likely to create political disadvantage; and on the other hand, will exploit issues that are more likely to create political advantage.

Vulnerabilities at the local level in responding central government's policies related to freedom of religion/ belief show that politicization of religion has also been used as the contestation area for political elites at the local level. At the same time, findings of this monitoring show the low rate of

political education in the society which makes them vulnerable to be politicized.

The State has not been able to fulfill its promise to ratify various human rights covenants and conventions that are already legally binding, which is proved by conserving various legislations that are formally and substantially illegal as they are not in line with human rights principles.

SETARA Institute proposes eleven general recommendations to ensure the freedom of religion/belief in Indonesia:

1. The President and the the People's Consultative Assembly should consider the importance of amending constitution in order to completing the assurance of constitutional rights of the citizens, including the assurance of freedom of religion/belief.
2. The President should revoke Joint Ministerial Decree on the Restriction of Ahmadiyah, because formally and substantially the policy is clearly in contradiction with legislations and particularly contradicts the constitution. The Decree has also escalated violations of freedom of religion/belief in 2008.
3. The President and the Parliament should immediately change various legislations which restrict the freedom of religion/belief. The government and the Parliament should also harmonize legislations with the ratified covenants and conventions, particularly those related to the freedom of religion/belief.
4. The President and the Parliament should put in consideration

the importance of a law on anti religious intolerance by conducting academic review and preparing the draft of law.

5. Police of the Republic Indonesia must without exception provides protection to every citizen who experiences violence as a result of persecution and intolerance. Indonesian Police should also increase the human rights education and their apparatuses' capacity, particularly in the context of providing guarantee of freedom of religion/belief.

6. The President or representing minister should evaluate the implementation of Joint Ministerial Regulation No. 08 and No. 09/2006 on the Implementation Guide for Head/Vice-head of Local Area in the Maintenance of the Harmony between Religious Society, the Empowerment of the Forum of Harmony of Religious Society, the Establishing of the Religious Place of Worship.

7. Department of Home Affairs and Department of Law and Human Rights should immediately establish a holistic mechanism in order to prevent and evaluate local regulations tha t are gender discriminative and in contradiction with human rights, including with the constitution.

8. Political parties should integrate the issue of freedom of religion/belief and inclusive religious practices in their party's political agendas, as political parties also have the obligation of the fulfillment of human rights.

9. Political parties and other political elements should stop the practices of religious politicization which is meant to

gather public supports to choose them in every political contestation discourse.

10. The follower of religion/belief should utilize the Forum of Harmony of Religious Community (Forum Kerukunan Umat Beragama – FKUB) as a dialogue forum in solving the problems of freedom of religion/belief and strengthening the climate of tolerance. Bureaucratization of FKUB in giving permission of establishing place of worship shall be returned to the followers of religion/belief to freely establish place of worship.
11. Society, leaders in society, and academicians should promote the re-strengthening of tolerance which became the social modal of the nation in the past, which at this moment has been eroded by various social changes. The development of education on citizenship, universal religiosity and natural character is needed. []

Contents

1
INTRODUCTION

SETARA Institute is an organization founded by a couple of people who have concerns in realizing an equal society. One of the concerned issues of this organization is promoting the guarantee of freedom of religion/belief and continuously encouraging the State to fulfill the rights to freedom of religion/belief in Indonesia. The yearly report is an effort from SETARA Institute to inform the public and promote the latest and regular condition of freedom of religion/belief in Indonesia to public.

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progresses on guarantee of freedom of religion/belief in Indonesia; [2] to encourage the State to fulfill its guarantee of freedom of religion/belief, including revising various products of legislation which limit the freedom of religion/belief and the recovery of victim's rights; [3] to provide database on freedom of religion/belief; and [4] to strengthen civil society's networks and to expand the constituency to participate in promoting the freedom of religion/belief.

According to the census in 2000, the religious demography in Indonesia showed that 245 million persons adopt diverse religions, in which the composition was 88.2% Islam, 5.9% Protestant, 3.1% Catholic, 1.8% Hindu, 0.8% Buddha, and 0.2% other religions and beliefs. The result of Population Survey Amongst Census (Survey Penduduk Antar Sensus–SUPAS) in 2005 also shows similar numbers: Islam (87.20%), Protestant (5,79%, Catholic (3.08%), Hindu (1.73%), Buddha (0.60%), Kong Hu Chu (0.10%),[1] and others (0.12%). The data is a sociological fact which shows that Indonesia is a diverse country. Based on the aforementioned fact, pluralism, as a point of view, awareness and attitude in which every person, group and various entity is treated equally, shall be the base of implementation practices in the life of nation.

The yearly report was written based on data of monitoring

[1] In the 2000 Census, Kong Hu Chu is not been registered as a religion; but, in SUPAS 2005, along with the recognition of the State of the religion, the followers of Kong Hu Chu are registered and counted in the national administration. See also Laporan Tahunan Kehidupan Beragama di Indonesia 2008, CRCS UGM, 2008, p. 2. See also, Masyarakat Konghucu: Agama Kami di KTP Dikosongkan, Detik, 28/1/2003.

results from 10 regions: North Sumatra, South Sumatra, West Sumatra, Jakarta, Banten, West Java, Central Java and Yogyakarta, South Sulawesi, South Kalimantan, and West Nusa Tenggara.

The data were collected by: [1] conducting monitoring by 10 local observers; [2] having focus group discussions in 5 regions [West Sumatera, West Java, South Sulawesi, South Kalimantan, West Nusa Tenggara]; [3] monitoring media; [4] collecting data from religious/belief institutions and government institutions; and [5] interviewing authorized government at local level in 10 provinces. []

2
OPERATIONAL DEFINITION AND FRAMEWORK OF ANALYSIS

The monitoring and writing of report of freedom of religion/ belief in Indonesia are based on human rights perspective, which puts freedom of religion/belief as an individual right which is non-derogable. Therefore, definitions used in the monitoring and writing of report refer to definitions in the discipline of human rights law. Freedom of religion is a guarantee provided by the State on the freedom of belief of individuals and the freedom of worship individually and in community. Freedom of religion is considered by a large number of people from various nations and society as a fundamental human right.[2]

The terminology of RELIGION or BELIEF in human rights perspective should not be interpreted narrowly and limitedly, but it should be constructed widely. The common misunderstanding which often founded is asserting the belief in God (theistic) as

[2] Davis, Derek H., The Evolution of Religious Liberty as a Universal Human Right, republished on December 5, 2006.

a religion. However, Buddhaism is non-theistic and Hinduism is polytheistic.

Religion or belief is not merely limited to traditional religions or to insti-tutions that have characteristics or practices that are analogous to the traditi-onal religions, which in the discipline of religion are called samawi (descended from heaven) religion. The newly formed religion or belief as well as the religion of the minorities, or also called ardhi (emerged on earth) religions, also have the right to be protected from the dominant religious community.[3]

The perspective of human rights also underlines that the followers of theistic, non-theistic, or those who do not profess any religion or belief have the same rights and protection.[4] UN Human Rights Committee stated: “The Committee stated that 'religion or belief' includes minority and non-mainstream religions and theistic, non-theistic and atheistic beliefs. Article 18 also protects the freedom not to believe. (UN Human Rights Committee, General Comment No.22,1993). In that regards, the monitoring and writing of report also include various religions/ beliefs, including communities that do not have religion/ belief.

The main human rights instrument which regulates the guarantee of FREEDOM OF RELIGION/BELIEF is the International Covenant on Civil and Political Rights (1966), particularly Article 18, which includes: (1) freedom to adopt a religion or belief of his/her choice, and freedom, either individually or in community

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[3] Paragraph 2 – General Comment of Human Rights Committee No. 22 on Article 18, 1993.

[4] *Ibid.*

with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching; (2) no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice; (3) freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others; (4) the States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

In 2005, Indonesia has ratified the international covenant by the Law No. 12/2005 on the Ratification of International Covenant on Civil and Political Rights. The covenant is legally binding, and as a State Party that has ratified it, Indonesia has the obligation to integrate it in national legislations and to provide a periodic report to the UN Human Rights Commission.

Another human rights instrument regulating the freedom of religion/belief is the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, as initiated in the Resolution of UN General Assembly No. 36/55 on November 25, 1981. The declaration regulates the guarantee of freedom of religion/belief further than the International Covenant on Civil and Political Rights; nevertheless, as it is merely a declaration, it is non-binding to State Parties. Although it is not legally binding, the declaration shows the wide consensus of the international community. In that regards, it still has the moral power in the practices of international relations

in general. As a member state of the United Nations, Indonesia should not disregard the declaration in fulfilling its obligation to fulfill the human rights of its citizens.

> Article 6 of Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
>
> In accordance with article I of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:
>
> (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
> (b) To establish and maintain appropriate charitable or humanitarian institutions;
> (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
> (d) To write, issue and disseminate relevant publications in these areas;
> (e) To teach a religion or belief in places suitable for these purposes;
> (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
> (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
> (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

From the two human rights instruments above, it can be summarized that the operational definition of freedom of religion/belief has the elements of the freedom to adopt a religion or belief of his/her choice, the freedom, either individually or

in community with others, to manifest his religion or belief in worship, observance, practice and teaching in public or in private, including the freedom to change his/ her her religion or belief, even to not adopt any religion or belief.[5]

The liberal Moslem intellectual, Dawam Raharjo,[6] once expressed a similar opinion on freedom of religion/belief, among others: freedom to choose or to decide what religion to adopt, including to manifest someone's religion or belief in worship; freedom of religion also means freedom to not adopt a religion; freedom to change religion; freedom of religion also means freedom to disseminate the teaching; the State should allow the marriage of two people whose religions are different; and in the religious life, everyone has the right to form any religious sect.

This report of freedom of religion and belief in Indonesia is using the monitoring framework based on human rights, particularly the rights as enshrined in the International Covenant of Civil and Political Rights. Therefore, the writing method of this document is based on perspective of 'violation'. By using the 'violation' approach, this report can be understood as an effort to check on how far the State has done its generic obligation to respect and to protect the freedom of religion/belief.

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[5] Article 18 of Universal Declaration of Human Rights (1948): Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

[6] M. Dawam Raharjo, "Dasasila Kebebasan Beragama", Media Indonesia, 22/ 11/2005.

Human rights law is an international civil law which puts State as State Party; it means that State is the subject of law that is obliged to obey human rights law. As the subject of law, every human rights violation always puts State as the perpetrator. Violations of human rights law happen when State does not obey norms that bind the State, as enshrined in international covenants and conventions, in which the State has promised to obey through the process of ratification. As the subject of law, State is obliged to respect and to protect human rights.

The emphasize on human rights epistemology as explained above has clarified the difference between human rights law and international criminal law, which puts individual as the subject of law. As a civil law, sanctions recognized in human rights law are sanctions from international society, obligation to reform policies, and fines in the forms of compensation, restitution and rehabilitation for victims whose rights have been violated.

The emphasize on human rights epistemology as explained above has clarified the difference between human rights law and international criminal law, which puts individual as subject of law. As a civil law, sanctions recognized in human rights law are sanctions from international society, obligation to reform policies, and fines in the form of compensation, restitution and rehabilitation for victims whose rights are violated. Meanwhile, in international criminal law (Rome Statute), not only the subject of law is individual, sanction given to the perpetrator is criminal sanction of imprisonment.

As a State Party in international human rights law, Indonesia has the obligation to respect and to protect everyone's freedom of religion or belief.[7] The basic principle of the obligation 'to respect' is to not do anything which violates the integrity of individual or groups or ignores their freedom; meanwhile, the obligation 'to protect' is to take actions needed to protect the rights of individual/group of people from the crimes/violations of law/violence committed by other individual or group, including to take preventive action or to not take ignoring action that reduces the enjoyment of their freedom.

Although the basic character of human rights is non-derogable and is fundamental in every human being, according to Syracuse principle that has been agreed upon, there are two types of rights based their implementation, namely non-derogable rights (the rights of which the fulfillment cannot be delayed or postponed) and derogable rights (the rights of which the fulfillment can be delayed or postponed). The Syracuse principle underlines that the rights which can be delayed or postponed can only be delayed or postponed in specific situation or condition that is considered dangerous to public interests.

At the same time, the principle of non-derogable rights emphasizes those rights which are unconditional or absolute in character, and therefore, they cannot be postponed or delayed in any situation or condition. The rights included in the latter principle are: the right to life (to not be killed), the right of self-intact (to not be tortured, kidnapped, ill-treated, raped), the

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[7] Article 18 of International Covenant on Civil and Political Rights.

right to be free from slavery, the right of freedom of religion, thought and belief, the right to be treated equally before the law, the right to not be imprisoned on the ground of his/her failure to fulfill a contractual obligation, and the right to not be criminalized due to the retroactive law. In that sense, all types of acts which may cause the annihilation of someone's or a group of people's rights of freedom of religion – as an element of non-derogable rights – can be categorized as human rights violations.[8]

Indonesian Constitution, in the documentation, is also used as a parameter, although in SETARA Institute's opinion, the Constitution has ambiguity and interpretation bias at the implementation, has discriminative substances, and does not accommodate all religious/belief communities, including those that do not have God.

VIOLATION OF THE RIGHT TO FREEDOM OF RELIGION/ BELIEF is a form of the State's failure or negligence in implementing it, such as interfering with someone's freedom or not protecting someone or a community that becomes the target of intolerance or criminal acts based on religion or belief.

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[8] Article 4 (2) of International Covenant on Civil and Political Rights stated that the State should not ignore the right of freedom of religion and belief, including in time of public emergency. It means that the right of freedom of religion or belief takes precedence over freedom of expression or freedom of association. However, it does not mean that other State's interests will never surpass freedom of religion or belief. On the contrary, it means that even in time of public emergency, this fundamental right can only be neglected if only guaranteed in the valid restriction article. See also *Komnas HAM, Lembar Fakta HAM 15, Hak Sipil dan Politik: Komite Hak Asasi Manusia,* Jakarta, 1998, p. 190.

DISCRIMINATION AND INTOLERANCE BASED ON RELIGION,[9] is a violation of freedom of religion, as enshrined in Article 2 Paragraph 2 of Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which says "For the purposes of the present Declaration, the expression 'intolerance and discrimination based on religion or belief' means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis," such as not accepting a community or expressing or exposing hate to other community based on differences in religion or belief.Referring to the definition above, there are two types of violations conducted by State, namely [a] by doing an active action which makes the limitation, differentiation, involvement, and/or hindering the enjoyment of someone to have a religion/believe are possible (by commission); and [b] by ignoring the violations of someone's rights, including by ignoring any criminal action conducted by someone and not processing it under the law (by omission).

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[9] Article 1 of Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981): "[1] Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching; [2] No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice; [3] Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Not only documenting violations of freedom of religion/ belief conducted by the State, this monitoring also documented criminal actions related to freedom of religion/belief conducted by citizens against other citizens. In general, the actions conducted by citizens include [a] criminal actions, such as arson of house of worship, intimidation, physical violence, etcetera; and [b] intolerant actions.

Using such a framework, the report of monitoring divided four (4) categories of violations based on the legal subject and responsibility:

[1] active action by State (by commission),

[2] ignorance action conducted by State (by omission),

[3] criminal action conducted by citizens, and

[4] intolerance conducted by society.

Regarding violations under the category of ‘by commission’ and ‘by omission’, the legal framework to question the matters is human rights framework and human rights law which are stated in the Covenant of Civil and Political Rights and are founded in a couple of human rights conventions. For the category of ‘criminal actions’ which are done by citizens and ‘intolerance’, the legal framework which can be used is Criminal Code Law (*Kitab Undang-undang Hukum Pidana*/KUHP).

INTOLERANCE is derived from the belief that his/her community, belief system or lifestyle is higher than other’s. It can cause a couple of consequences, ranging from the lack of appreciation or desertion of other people to institutionalized discrimination, such as Apartheid or deliberate annihilation of

people by genocide. All of those acts derived from the denial of fundamental values of human.[10]

INTOLERANT AND HATE CRIMES are acts motivated by hate or bias to someone or a group of people based on gender, race, skin color, country of origin, and/or sexual orientation. Intolerance can be serious crime, such as attack or fight, but not always. It can also be minor actions, such as mockery on someone's race/religion. Written communication, including graffiti or blackmail, which shows prejudice or intolerance against someone or a group of people can also be categorized as hate crime. It also includes vandalism and conversation based on intolerance as well as those regarded by some people as jokes.

Hate crime is the violence of intolerance and bigotry, intended to hurt and intimidate someone because of their race, ethnicity, national origin, religious, sexual orientation, or disability. The purveyors of hate use explosives, arson, weapons, vandalism, physical violence, and verbal threats of violence to instill fear in their victims, leaving them vulnerable to more attacks and feeling alienated, helpless, suspicious and fearful. Others may become frustrated and angry if they believe the local government and other groups in the community will not protect them. When perpetrators of hate are not prosecuted as criminals and their acts not publicly condemned, their crimes can weaken even those communities with the healthiest race relations.[11]

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[10] UNESCO, Tolerance: The Threshold of Peace. A teaching/ Learning Guide for Education for Peace, Human Rights and Democracy (Preliminary version). Paris: UNESCO, 1994, p. 16.

[11] U.S. Department of Justice, Hate Crime: The Violence of Intolerance http://www. usdoj.gov/crs/pubs/htecrm.htm, accessed on December 1, 2008.

Intolerant and hate crimes are crimes related with freedom of religion/belief in which the object is individual. For this type of crimes, the responsibility lies on individuals as subjects of criminal law. Meanwhile, the State's responsibility is to protect everyone from the threat of intolerance and process is legally when a crime has happened.

UNESCO notes several symptoms of intolerance and their behavioral indicators: (UNESCO: Tolerance: the threshold of peace. A teaching/learning guide for education for peace, human rights and democracy (Preliminary version). Paris: UNESCO. 1994, p. 16.)

Language: Denigrations and pejorative or exclusive language that devalues, demeans and dehumanizes cultural, racial, national or sexual groups. Denial of language rights.

Stereotyping: Describing all members of a group as characterized by the same attributes - usually negative.

Teasing: Calling attention to particular human behaviors, attributes and characteristics in order to ridicule or insult.

Prejudice: Judgment on the basis of negative generalizations and stereotypes rather than on the actual facts of a case or specific behaviors of an individual or group.

Scapegoating: Blaming traumatic events or social problems on a particular person or group.

Discrimination: Exclusion from social benefits and activities on primarily prejudicial grounds.

Ostracism: Behaving as if the other were not present or did not exist. Refusal to speak to or acknowledge the other, or their culture.

Harassment: Deliberate behaviors to intimidate and degrade others, often intended as a means of forcing them out of the community, organization or group.

Desecration and effacement: Forms of defacement of religious or cultural symbols or structures intended to devalue and ridicule the beliefs and identities of those to whom these structures and symbols are meaningful.

Desecration and effacement: Forms of defacement of religious or cultural symbols or structures intended to devalue and ridicule the beliefs and identities of those to whom these structures and symbols are meaningful.

Bullying: Use of superior physical capacity or greater numbers to humiliate others or deprive them of property or status.

Expulsion: Officially or forcefully expelling or denying right of entrance or presence in a place, social group, profession or any place where group activity occurs, including those upon which survival depends, such as places of employment or shelter, etc.

Exclusion: Denying possibilities to meet fundamental needs and/or participate fully in the society, as in particular communal activities.

Segregation: Enforced separation of people of different races, religions or genders, usually to the disadvantage of one group (includes Apartheid).

Repression: Forceful prevention of enjoyment of human rights.

Destruction: Confinement, physical abuse, removal from area of livelihood, armed attacks and killings (includes genocide).

In Indonesian laws, this type of crimes is actually accommodated by Criminal Code (KUHP), Article 156,[12] which states that:

> "If there is anyone expressing antagonism, hate against or degradation to something or some classes of Indonesian people in front of public, he/she is threatened with imprisonment at

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[12] The article is an area of contestation of the interpretation of "hate crimes". Thus far, the article is always used identically with Article 156a, which is the product of PNPS No. 1/1965 that is often used for those who are accused adopting heretical sect. The article was also used by the prosecutor in the trial of Rizieq Shihab and Munarman, but the judge refused to use the article.

> maximum four years or fine at maximum four thousand five hundred rupiah."
>
> "Classes mentioned by this article and the following article means every part of Indonesian people that has something or some other parts different due to race, country of origin, religion, area of origin, descendant, offspring or position before the constitutional law."

Nevertheless, in the legal practice in Indonesia, these articles are instead used in the wrong way, which is to trick those who are claimed to be heretical and blaspheme a religion.[]

3
FINDINGS

3.1. GENERAL PICTURE

The implementation of the constitutional guarantee of freedom of religion/ belief, as enshrined in the Constitution 1945, did not have significant progress in 2008. As years before, in 2008, violations of freedom of religion/belief still happened, even increased.

The State, either at legislative, executive or judicative level, was still not able to create constructive breakthrough for the fulfillment of constitutional rights of its citizens to have religion/ belief freely. Instead, in 2008, there were systemic efforts to create uniformity through legislations and policies by using monolithic view based on religion and morality.

The political movement of creating uniformity is not only monopolized by particular political powers, Islamic mass organizations that so far often have acted intolerantly, but has been obsessed by the State executors and integrated

in the State body. The irrational contestation in House of Representatives and Government of Indonesia which resulted in the enactment of Draft of Law on Pornography as a law is one of the facts that were able to be seen in 2008. Most citizens were manipulated by the incompetent political performance and political will of uniformity under the slogan of religion and morality. Collective fraud was created by the State executors who have authority to legislations; all of those were done to continuously build up and accumulate political support and to be in power. The logics of politics of majority versus minority, moral versus immoral, good versus bad have dominated the practices of Government of Indonesia. The Constitution which should be a consensus and an instrument to regulate relations among citizens and relations between citizens and the State has been removed and replaced with the logics of politics to create the uniformity.

In 2008, freedom of religion/belief was once again failed to have intact recognition from the Constitution due to biases in interpreting the Constitution which are still carried on by the political elites of the State. Instead, at the same time, the State produced policies which legitimize uniformity by using the dishonor of and defamation of religion as an excuse. In such situations, the violations of freedom of religion/belief increased.[13] This opinion emphasizes the hypothesis that reformation merely provided political liberties, but has seized civil liberties.

Generally, the society in the 10 areas of monitoring regarded

[13] This opinion was expressed by most participants of Focus Group Discussion in Bandung (November 10, 2008), South Kalimantan (October 32, 2008) and Jakarta (November 13, 2008).

that reformation has not been able to provide constructive position to the freedom of religion/belief in Indonesia. A couple of local prominent figures think that the situation at this moment is even more destructive than the situation before reformation.

The society in the areas of monitoring, in general, regarded that the existing regulations have actually provided guarantee of freedom of religion/belief. However, the fact that law enforcers are submissive to mass persecutions in cases of violence based on religion makes religious/belief life is worse.

The society's opinion in the 10 areas of monitoring was diverged in perceiving Joint Decree of Three Ministers No. 3 Year 2008, Number: KEP-033/A/JA/6/2008, Number: 199 Year 2008 on Warning and Order to the Followers, Members, and/or Board Members of Jamaah Ahmadiyah Congregation (*Jemaat Ahmadiyah Indonesia*/JAI) and Citizens (which later will be shortened as Joint Ministerial Decree on the Restriction of Ahmadiyah). Some of them regarded it as a solution; some thought that the Joint Ministerial Decree has been used as a weapon to legitimize the mass persecution to disparate community. The spirit of Joint Ministerial Decree has also disseminated intolerance to other communities that are considered different.

Although it seemed that violations of freedom of religion/ belief were only experienced by certain religious/ belief communities, there are actually some other unexpected religious/belief communities that also experienced violence and discrimination. In South Kalimantan, for instance, the Buddhists even received discrimination from another religious community

that is under Forum of Harmony of Religious Community *(Forum Kerukunan Umat Beragama*/FKUB).

The opinion recorded in the monitoring also showed that the people's opinion is still varied in perceiving freedom of religion/belief.

The view on guarantee of freedom of religion/belief is also varied in the political parties.[14] In a discussion conducted to gather opinion from representatives of political parties, it was also clear that most of political parties as the 'suppliers' of candidate of State executors do not have main concerns in fulfilling the guarantee of freedom of religion/belief. The understanding that is varied from a political party to another as seen in the discussion has also clarified why the Indonesian parliament is not able to take side and to act in pushing the implementation of freedom of religion. The contestation of discourses and legislations in the Parliament on the implementation of freedom of religion/belief to achieve ideological or political interests as well as to have supports from public is rooted from, among others, the ambiguous view of political parties.

The transfer of the State's authority to religious organizations supported by the State, such as Indonesian Ulema Council (*Majelis Ulama Indonesia*/MUI), which in the 2007 annual report of SETARA Institute was a problem, has changed in 2008. The State, through a couple of regulations, has underlines the role of MUI in some *muamalat* (Islamic economy) areas. In Law No.

[14] Focus Group Discussion with political parties, November 13, 2008, in Jakarta.

21/2008 on Sharia Financing[15] and Law No. 40/2007 on Limited Liability Company (Ltd.),[16] the role of MUI is stated explicitly. Although some people are not worried about the existence of MUI's roles as those are only administrative formal interests,[17] these formal roles have the potential to produce binding edicts *(fatwa)*. From issuing binding fatwa in muamalat areas, there is a high potential of the shifting of roles to other areas. As we all know, without the formal justification of its role, MUI has already been able to attract the State to give parts of its authority to the organization which does not fully represent the interests of Islamic community.[18]

2008 was the year to venture on the creation of image and gaining of support from public for the coming General Election 2009. No wonder, the siding and act of politicians, State executors, and society organizations, at national as well as local level, has relied heavily on how great the image will be polished and how huge the support will be gained. As an area

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[15] See Article 26 (2), "Principles of syariah as meant in paragraph (1) as instructed (fatwa) by Majlis Ulama Indonesia." Meanwhile, paragraph (3) states: "Fatwa as meant in paragraph (2) are described in the Regulations of Bank of Indonesia." See also Article 32 (2): "The Monitoring Council of Syariah as meant in paragraph (1) is appointed by General Meeting of Stakeholders based on the recommendation of *Majlis Ulama Indonesia*."

[16] See Article 109 (2): "The Monitoring Council of Syariah as meant in paragraph (1) consists of an expert of syariah or further that is appointed by RUPS (General Meeting of Stakeholders – ed.) based on the recommendation of *Majlis Ulama Indonesia*."

[17] This opinion was expressed by Azyumardi Azra in Workshop to Discuss SETARA Institute's Monitoring Results, December 23, 2008.

[18] See also Menapaki Bangsa yang Kian Retak, Annual Report of Religious/ Belief Pluralism in Indonesia, The Wahid Institute 2008.

of contestation, everyone will choose issues that have minimum risks of disadvantage; and, on the other hand, will exploit issues which are able to create advantages.

3.2. CONDITION IN AREAS OF MONITORING

The general picture of North Sumatra showed that freedom of religion/ belief is quiet conducive. Furthermore, due to Head of Public Relations Division of Provincial Police Department (Polda) of North Sumatra, the pluralism and understanding in the society is pretty high. Nevertheless, as the sensitivity of the issue is high, there are still some parties that use the issue of religion for particular interests. The authorities in North Sumatra create the religious harmony by having inter-religion dialogues.[19] Similar opinions were expressed by Syahrin Harahap, Chair of FKUB Medan,[20] and Director of Legal Aid Institution Medan.[21] The religious leaders truly understand that the public awareness on the importance of tolerance and guarantee freedom of religion/ belief is still low. Therefore, regular dialogues should always been conducted. The general picture as stated above can also be seen on the minimum number of incidents of violations of freedom of religion/belief in North Sumatra.

South Sumatera geopolitically does not have any significant religious problem as several other areas. Nevertheless, South Sumatra was the only province in 2008 that issued Governor

[19] Interview with Head of Public Relations Division of Provincial Police Department *(Polda)* of North Sumatra, Kombes. Pol. Baharuddin Jaffar, Msi. on Friday, December 12, 2008.

[20] Interview on Saturday, December 13, 2008.

[21] Interview on Monday, December 8, 2008.

Decree on the Restriction of Ahmadiyah. The background of issuance of the decree was completely different from the background of issuance of the similar decree at the national level. Due to the former Assistant I of Provincial Government of South Sumatra, Drs. H. Abdul Shobur, SH, the issuance of the Decree of Governor of South Sumatra No. 563/ KPTS/ BAN-KESBANGPOL & LINMAS/ 2008 on September 1, 2008, on the Restriction of Ahmadiyah Sect and Activities of Followers, Members and/or Board Members of Jamaah Ahmadiyah Congregation in South Sumatra Area was merely because of the call of Islamic community.[22]

There was no instability behind the issuance of the decree. After the decree was issued, the activities of Ahmadiyah even were going on as usual.[23] This condition also proves that the tolerance in South Sumatra is quiet conducive. Similarly, the monitoring in the area only recorded some minor incidents of violations to the freedom. In that sense, the issuance of the Governor Decree, which was later warned by Ministry of Home Affairs, Mardiyono, was presumed as merely an effort to rate the political support through politicization of religion towards the Local Election (Pilkada) of Governor of South Sumatra.

West Sumatera Province is a province which has quiet high rate of politicization of religion. This Province had the second highest number of incidents of violations to freedom of religion/belief. Contributor of SETARA Institute recorded

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[22] Interview on Monday, December 15, 2008.

[23] Interview with Chair of Ahmadiyah Branch Palembang, Alamsyah Syufri, and Conveyor *(Mubalig)* of Ahmadiyah, Hafiz Qudratullah on Tuesday, December 16, 2008.

that the local autonomy has strengthened the narrow primordialism,[24] which is indicated by the desire to put forward the local characteristics. Although the appreciation to local wisdom is needed in the context of democracy, the minimum separation between local traditions and religion has made the boundary of local wisdom versus religious domination in public vague; as a consequence, the emerging issues are the weakening of tolerance and the strengthening of uniformity.

Mostly, the religious "conflict" problems in West Sumatra were frictions amongst Islamic communities. The labeling of heretical to the groups that are different had become a trend. Even though religious leaders are aware on the importance of tolerance, the absence of citizens' sincerity to recognize the difference has always been the trigger of such problems in West Sumatra. If the condition is still very complicated between the elites, it certainly is even more complicated in the society. Such conditions have made the absence of inter-religion dialogue in West Sumatra. Disputes related to freedom of religion/belief are more often hidden than settled plainly.[25]

Banten Province, as admitted by a local leader in Serang Regency, has generally quiet conducive climate of freedom of religion/belief. For the Local Government, the religious affairs are the domain of the Central Government; therefore,

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[24] Sudarto, Director of Center of Inter-community Studies *(Pusat Studi Antar Komunitas/PUSAKA)* Padang and member of Indonesian National Commission on Human Rights – representative of West Sumatra Province, in his report for SETARA Institute, "Kebebasan Agama dalam Cita dan Realitas", December 2008.

[25] Such opinions were expressed in Focus Group Discussion organized by SETARA Institute in Padang, November 3, 2008.

local regulations on religion fully refer to the regulations from the Central Government.[26] Based on such a view, the Local Government of Serang Regency has also denied the information of having a plan to make a local regulation on the restriction of Ahmadiyah. Nevertheless, MUI of Banten has been pretty active in issuing fatwa on some religious sects/ belief that are alleged as heretical.[27] Although these fatwa were not made jointly with the Provincial/ Regency Government, these fatwa have been quiet effective in triggering the society to do mass persecution to religious sect/belief that is alleged as heretical.

DKI Jakarta, as the year before, shows quiet a high number of violations of freedom of religion. As the center of contestation of various interests, the domination of Moslem community in the city had changed Jakarta from a cosmopolitan and heterogeneous city to an area vulnerable to many violations of freedom of religion/belief. In Jakarta, the role of the Local Government on the freedom of religion/ belief is not much as Jakarta held another position, i.e. as the Capital City of Indonesia. Roles, incidents and problems documented in this report are mostly the articulations from national political elites, religious organizations and state institutions at national level.

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[26] Interview with Head of Public Relations of Serang Regency Government, M. Furqon, December 12, 2008.

[27] *Fatwa* No. 1 Year 2008 states that the teachings demonstrated by Nursyahidin in Miftahul Huda Pesantren (an Islamic boarding school – ed.) and to a couple of citizens in Baros Village, Baros Subdistrict, Banten, are heretical teachings. MUI of Banten also issued its support to MUI's *fatwa* stating that Ahmadiyah is a heretical sect. Particularly on Ahmadiyah case, although there are MUI's *fatwa* and Joint Ministerial Decree on the Restriction of Ahmadiyah, it can be noted that Ahmadiyah communities in Banten are safe, as their existence does not disrupt their surroundings.

West Java is the province which has been recorded having the highest number of violations of freedom of religion/belief. Most of the incidents happened in Cianjur, Sukabumi, Kuningan and Tasikmalaya. The harmony between religious communities, as stated by religious leaders,[28] in general is worse than in the previous years. Such an opinion was stated by almost every representative of religious leaders, including those from Nahdlatul Ulama and Muhammadiyah. Only MUI West Java[29] denied, as in his opinion, half of the incidents of religious based violations were triggered by the dishonor and defamation of religion.

Aside from problems related to Ahmadiyah, actually there have been some problems on the freedom of religion/belief there. Followers of Buddha and Kong Hu Chu, for instance, are still facing difficulties in settling down their dispute in building worship place. Christians are also still facing difficulties in building worship place. Discrimination in public services, such as marriage registration, has also been happening in West Java. Favoritism of the State to Islam which has institutions up to District level, for instance, Office of Religious Affairs *(Kantor Urusan Agama/KUA)* has differentiated the service of civil registration of other religions that do not have the same infrastructure up to the District level.[30] Almost every

[28] The opinion was expressed in Focus Group Discussion organized by SETARA Institute in Bandung, November 10, 2008.

[29] The opinion was expressed by Secretary of MUI of West Java, Rafani, in Focus Group Discussion organized by SETARA Institute in Bandung, November 10, 2008.

[30] The opinion was expressed by Secretary of MUI of West Java, Rafani, in Focus Group Discussion organized by SETARA Institute in Bandung, November 10, 2008.

representative of religious leaders in Focus Group Discussion organized by SETARA Institute worried about the continuation of the State's submission to mass persecutions in the religious/ belief life.

Central Java and **Yogyakarta**, which are categorized as a region in the monitoring, actually have their own characteristics. In the heterogeneous Central Java, the harmony between religious communities and the guarantee of freedom of religion/ belief are quiet high. It can be seen in the low number of violations of freedom of religion/ belief documented. Meanwhile, in Yogyakarta, although there are not many violations of freedom of religion/belief documented in this report, a couple of radical Islamic organizations have emerged. And, as those in general, these organizations conduct practices of intolerant religious view to groups that are alleged as heretical.

In **West Nusa Tenggara (NTB),** as expressed by the religious leaders and government institutions,[31] the tolerance between religious communities is generally quiet conducive. The incident of violations of freedom of religion/belief recorded in this report is the arson of Pure Sangkareang, Keru Village, Narmada, West Lombok. In NTB, almost similar to the condition in West Sumatra, the conflicts happened are mostly frictions in various Islamic communities. Mostly, Moslems in NTB truly recognize the legality of MUI's fatwa because MUI is seen as a representation of State. The religious formality which is represented by building many Mosques is not directly proportional with the will of

[31] The opinion was expressed in Focus Group Discussion organized by SETARA Institute in Mataram, November 6, 2008; as well as, in the interview with I Gde Partha (Member of FKUB West Lombok), December 23, 2008.

Moslem community in NTB to put deep meaning of values to the Mosques. The strong religious formality can also be seen in the strong vision of Islam in the governance of some areas in NTB. Dompu and Bima, for instance, are two (2) areas that often issue local regulations based on morality and religion. However, it is also important to note a constructive initiative to the strengthening of tolerance in NTB, i.e. producing agents of religious teaching that have perspective of multiculturalism, which was done by Provincial Government.

The religious/belief life in **South Kalimantan** is regarded to be quiet conducive by religious leaders.[32] This opinion was supported by the low rate of violations to freedom of religion/ belief in South Kalimantan. FKUB, as admitted by Head of *Kesbanglinmas* of South Kalimantan, is pretty effective as a mean of communication between religious communities. An interesting point from South Kalimantan which should be noted is that there is a common view in FKUB members to Buddhist community, which until now has not had worship place in South Kalimantan. They have agreed that the requirement of minimum quantity of followers should be fulfilled before building a worship place. FKUB of South Kalimantan has not been able to ease the discriminations experienced by the Buddhist community.

In **South Celebes,** the freedom of religion/ belief is described as highly conducive, as expressed by religious leaders and representatives of government institution. This opinion was based on the minimum rate of violations of freedom of religion/

[32] The opinion was expressed in Focus Group Discussion organized by SETARA Institute in Banjarmasih, October 31, 2008.

belief happened in South Celebes.[33] Unlike the mainstreaming view, the contributor of SETARA Institute recorded that Celebes has in fact been able to be a portrait of the rising phenomena of politics of uniformity, as can be seen in local regulations which are based on morality and religion.[34] The power of the movement has been supported by various elements from Islamic organizations, such as Hizbut Tahrir, *Pemuda Penegak Syariat Islam, KPPSI,* Wahdah Islamiyah, FUI, and lastly the existence of FPI. One of the mass communities that actively struggle for the implementation of Sharia *(Syariat)* is Committee for the Preparation of Enforced Islamic Sharia (*Komite Persiapan Penegakan Syariat Islam/KPPSI).* KPPSI was established in 1999, chaired by Azis Qahar Mudzakkar. The defeat of Azis in the Local Election *(Pilkada)* in South Celebes in 2007 has actually weakened the social capital of the defenders of Sharia. Apart from the basic idea of enforcing Sharia in South Celebes, the politicization of religion carried out by KPPSI is proved detrimental politically, and has been a reason of his defeat in the election in South Celebes.

3.3. INCIDENTS AND VIOLATIONS

Since January to December 2008, there were 265 incidents of violations of freedom of religion/belief. The highest number was in June (103 incidents). The rest happened in the other months.

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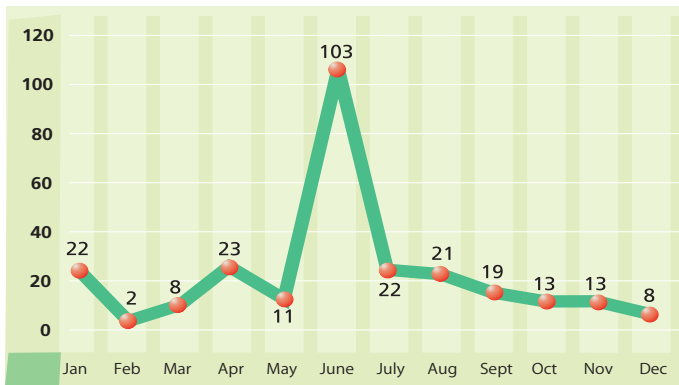
[33] The opinion was expressed in Focus Group Discussion organized by SETARA Institute in Makassar, November 17, 2008.

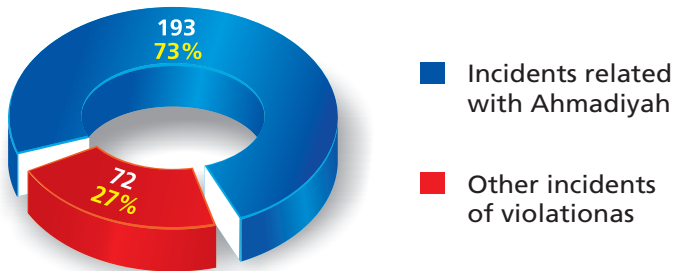
[34] Subair, once an activist in LAPAR Makassar and an observer of social-religious issues, in his paper submitted to Annual Report of SETARA Institute, "Formalisasi Islam, Kelompok Islam Keras dan Kebebasan Beragama di Sulawesi Selatan," December 2008.

Graphic 1:
Total Incidents, Monthly

The total incidents happened in 2008 increased significantly compared with the incidents documented by SETARA Institute in 2007, which were only 135 incidents of violations of freedom of religion/belief. The increase of incidents was probably because of two (2) points: first, the increasing of persecutions conducted by Islamic organizations against Ahmadiyah, as means to urge the government to issue the Presidential Decree on the Dissolution of Ahmadiyah; and second, the serious implication of Joint Ministerial Decree No. 3 Year 2008, No. KEP/033/A/JA/6/2008, No. 199 Year 2008 on Warning and Order to Followers, Members, and/or Board Members of Jamaah Ahmadiyah Congregation (*Jemaat Ahmadiyah Indonesia*/JAI) and Citizens.

Graphic 1 shows that the number of incidents of violations happened before and after June was constant. The number of incidents increased in June as there were many pressures to issue the Presidential Decree on the Dissolution of Ahmadiyah and the recent impacts of Joint Ministerial Decree on the Restriction of

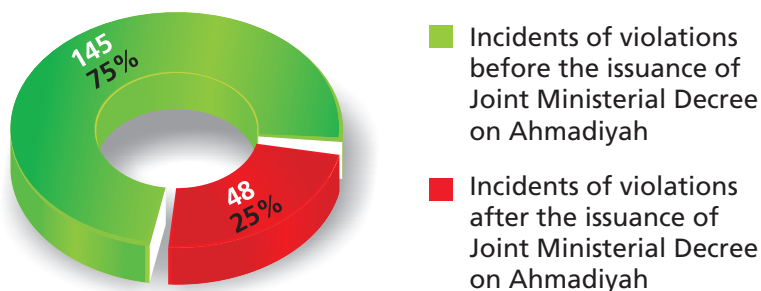
Ahmadiyah. Meanwhile, in the following months, the number of incidents of violations was relatively steady. It was because the government has done its function, to enforce the law, by prosecuting perpetrators of violations at Monas (June 1, 2008), Rizieq Shihab and Munarman. The arrest and trial of Rizieq Shihab and Munarman to the court has decreased the social capital as well as given a lesson to organizations that have been active so far in practicing persecutions and intolerance.

It should be admitted that the incidents of violations to freedom of religion/belief in 2008 were mostly on Ahmadiyah (193 incidents); meanwhile, the other 72 incidents did not have anything to do with Ahmadiyah.

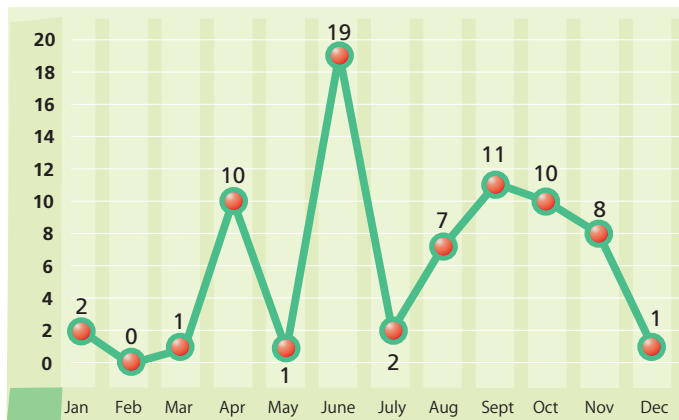
Graphic 2:
Comparison of Incidents Related with Ahmadiyah and Other Incidents

This documentation shows clearly that incidents of violations related with Ahmadiyah before and after Joint Ministerial Decree was issued were quiet high in number. From 193 incidents related

with Ahmadiyah, 48 incidents happened before the issuance of Joint Ministerial Decree and 145 incidents happened after the issuance. The fact of the high number of incidents of violations related with Ahmadiyah which happened before the issuance of Joint Ministerial Decree shows that persecutions and intolerance have big influence on the issuance of Joint Ministerial Decree on the Restriction of Ahmadiyah. On the other hand, the fact that the number of incidents of violations escalated after the issuance shows that the Joint Ministerial Decree has created serious implications to Ahmadiyah community. The persecutions and intolerance happened after the issuance of Joint Ministerial Decree show that the Decree has been used as a mean to legitimize the persecutions and intolerance.

Graphic 3:

Incidents of Violations to Ahmadiyah Community, Before and After the Issuance of Joint Ministerial Decree

Incidents of violations to freedom of religion/belief mostly happened in June 2008. If the incidents related with Ahmadiyah

are abstracted from Graphic 1, the number of incidents of violations to freedom of religion/belief is quiet moderate, although every violation should be raised. Such a fact shows that the incidents of violations to freedom of religion/belief in 2008 were triggered by the issuance of Joint Ministerial Decree on the Restriction of Ahmadiyah.

Graphic 4:
Total Incidents Every Month
without Incidents of Violations Related with Ahmadiyah

The incidents of violations to freedom of religion/belief in Indonesia in 2008 happened almost in every Province in Indonesia. At the highest, the incidents happened in West Java (73 incidents), West Sumatra (56 incidents) and Jakarta (45 incidents).

Graphic 5:

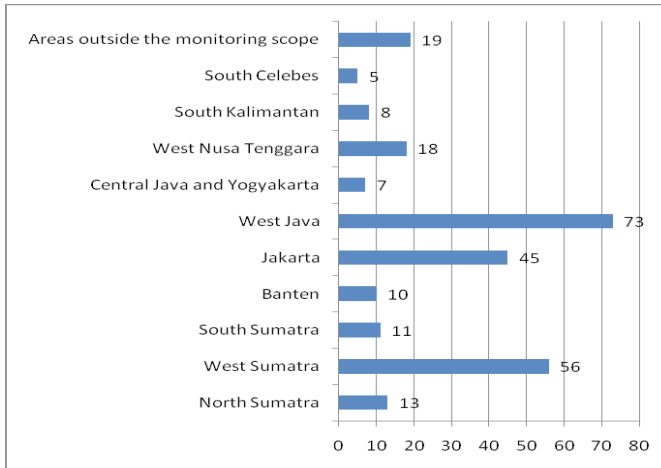
Total Incidents Based on Area of Incidents Happened

The graphic above shows that three provinces have the highest number of violations. The high number of violations in these provinces in 2008 was mostly related with Ahmadiyah, as may be seen in the following table:

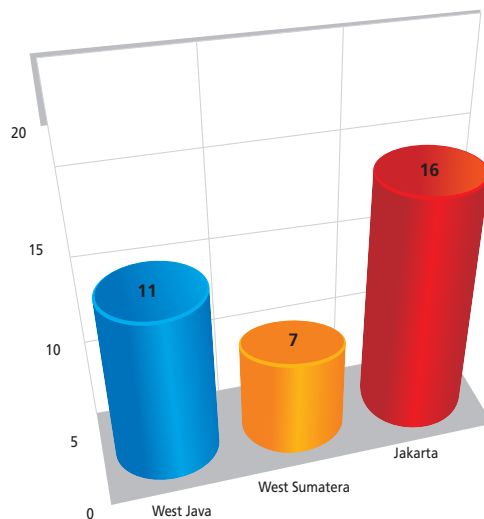
Table 1:

Incidents of Violations Related with Ahmadiyah and Others in Three Provinces

Province	Ahmadiyah	Others	Total
West Java	57	16	73
West Sumatra	49	7	56
Jakarta	34	11	45

As shown above, the three provinces have high rates of intolerance; just the opposite, the three provinces have low rates of tolerance.

If incidents related with Ahmadiyah are abstracted from Graphic 5, these three provinces still have the highest rate of intolerance. See Graphic 6 as the following:

Graphic 6:
Incidents of Violations Other than Those Related with Ahmadiyah in Three Provinces

16 incidents in West Java, 7 incidents in West Sumatra and 11 incidents in DKI Jakarta are still quiet high, compared with the other 7 areas of monitoring, in which both total incidents of violations related with Ahmadiyah and violations to other religion/belief are counted. Those were 13 incidents in North Sumatra, 11 incidents in South Sumatra, 10 incidents in Banten, 7 incidents in Central Java and Yogyakarta, 18 incidents in West Nusa Tenggara, 8 incidents in South Kalimantan, and 5 incidents in South Celebes.

In that sense, not only the high rate of intolerance, the potential of religious conflict is still quiet high in these three provinces (West Sumatra, West Java and Jakarta).

Areas, in which incidents of violations are high, such as West Java, West Sumatra and DKI Jakarta, have their distinct explanation. West Java and West Sumatra are areas in which the population are mostly Islam and have strong Islamic history in their society's life. Particularly, West Java has the root of high extremism and practices of puritan religion. For instance, Movement of *Darul Islam* and Indonesian Islamic Forces *(Tentara Islam Indonesia – DI/TII)* were founded in West Java, under the leadership of Kartosuwiryo. Although the increasing phenomena of violations are not completely based on this history, the practices of puritan Islam in West Java have triggered the practices of mass judgment to religious/belief groups that are alleged heretical.

Meanwhile, Jakarta is the center of contestation and articulation of interests and political groups in the country. Even, in 2007, most incidents happened in Jakarta. The domination of puritan Moslem community in the city has defeated the silent majority that actually does not agree with violence based on and in the name of religion.[35] The heterogeneity and plurality of Jakarta citizens have not been able to be the strong foundation to decrease the excessive actions of violence.

From the 265 incidents happened, SETARA Institute divided the 367 violations into four categories:

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[35] See Imprisoned Tolerance: Views of Young Generation on Nationality, Pluralism & National Leadership, SETARA Institute, Jakarta, May 2008.

[1] 99 actions were by commission by the State,
[2] 98 actions were by omission by the State,
[3] 88 actions were criminal actions by citizens, and
[4] 91 actions of intolerance were conducted by society.

In each of the categories, there were various types of violations. In this report, SETARA Institute introduced a more distinct categorization using human rights framework and ensured the space to bring the problem up and to demand the responsibility, either legally as well as ethically in the context of democracy.

Regarding violations under the category of 'by commission' and 'by omission', the legal framework to question the matters is human rights framework and human rights law which are stated in the Covenant of Civil and Political Rights and are founded in a couple of human rights conventions. For the category of 'criminal actions' which are done by citizens and 'intolerance', the legal framework which can be used is Criminal Code Law (*Kitab Undang-undang Hukum Pidana*/KUHP).

The different number of violations with incidents is caused of in an incident, several violations may happen; for instance, in an incident of damaging a worship place, also happened violence against the followers, seizing of religious documents, and so on.

3.3.1. By Commission and by Omission by the State

In the framework of human rights law, violations by commission as well as by omission are human rights violations done by State, because the State is a State Party which is

bound legally and morally as the State has ratified International Covenant on Civil and Political Rights, in which the Article 18 emphasizes the obligation of State to guarantee freedom of religion/belief. As the Indonesian Constitution also underlines freedom of religion/belief (Article 28E), we can also say that the State has violated the Constitutional guarantee of freedom of religion/belief of its citizens, including freedom to perform their religion/belief.

On violations done by the State, this report underlines that the State should be responsible by stopping their active actions of violating freedom of religion/belief, rescinding/ annulling restrictive and discriminative policies, providing remedy of victims' rights, and taking legal action against everyone who has done criminal actions related to freedom of religion/belief.

Legally, there has not been a space to confront the statements by State's officials which have provoked or encouraged the condoning of intolerance. Nevertheless, as tolerance is an imperative value of democracy and human rights, the siding and intolerant actions supported by the State (in these cases, public officials) can also be confronted morally. It should be noted that human rights were built and developed on the ethical principles of tolerant democracy and humanity.

This report noted that statements by State's officials which provoked or encouraged the condoning of intolerance, as well as the vulnerable situation and conditions in the region and in the society – either due to the low education on citizenship or behavior of religious elites and political elites that are more exploitative in doing religious politicization – have actively and

effectively influenced the society. State's provocation to side and to act intolerantly has been imitated by citizens, either individually or in group.

Under the category of by commission by the State, the report recorded 99 violations in 17 types of action. Under the category of by omission, there were 89 cases, either by omitting criminal actions done by citizens or by ignoring legal actions against perpetrators of criminal actions. The table below shows types of violations by State and the narrative of some incidents.

Table 2:
Types of Violations to Freedom of Religion/Belief done by the State

No	Type of Violation	Total
I.	**BY COMMISSION [active action by the State]**	**99**
1	Discrimination of access to public services	2
2	Intimidation	1
3	Statement by State's official which encouraged intolerance and violence	24
4	Prohibiting religious activity and worship	8
5	Prohibiting religious sect/belief	7
6	Prohibiting to build worship place	1
7	Compulsion of a belief and converting someone's belief	3
8	Permission to shut	8
9	Damaging worship place	2
10	Sealing worship place	5
11	Sealing Islamic board school (madrasah)	1

12	Damaging religious property	1
13	Trial against someone who's alleged as heretical	25
14	Shooting someone [died]	1
15	Repressive and discriminative policy	3
16	Observation and spying	6
17	Forced discontinuation of learning activity	1
II. BY OMISSION [omission by the State]		**89**
18	Omitting violence	39
19	Ignoring legal actions	50
TOTAL		**188**

The State, through its apparatus, did two (2) violations in the form of discrimination (conditional policy) and **DISCRIMINATION OF ACCESS TO PUBLIC SERVICES**. In July 2008, Office of Religious Affairs (KUA), Department of Religious Affairs, Danau Kembar District, West Sumatra, denied to issue Marriage Registration of an Ahmadiyah follower. In June 2008, Regent of Mataram, West Nusa Tenggara (NTB), applied certain requirements to Ahmadiyah followers, i.e. not allowed to live communally, not allowed to do exclusive activities.

The State, through its apparatus, conducted (1) violation in the form of **INTIMIDATION.** On September 13, 2008, Regent of East Lombok stated, "There is no place for Ahmadiyah community at Bumi Selaparang, except they repent from Ahmadiyah."

The State, by its apparatus, conducted 24 violations by giving **STATEMENTS WHICH ENCOURAGED INTOLE-RANCE AND VIOLENCE;** one of the State officials who had conducted

intolerance was Vice Presidents, M. Jusuf Kalla.[36] As well, some members of Legislative Assembly of Republic of Indonesia (DPR RI), such as Member of Commission VIII of DPR RI, DH Al Yusni, who stated that "the fact that mass are still found on the street is a prove that the Joint Ministerial Decree is not clear and looks as though was issued half-heartedly. Therefore, do not blame anyone if conflicts on Ahmadiyah will still be persistent.[37]" On June 2, 2008, Member of Commission III of DPR RI, Nursyamsi Nurlan, also acted intolerantly by making a statement which urged Head of Police Department to arrest Lia Eden because she has done religious defamation.[38] At the same time, another member of Commission III, Ma'mur Hasanuddin, on June 16, 2008, acted intolerantly by stating that Ahmadiyah should not only be dissolute as an organization, but also as a movement, because Ahmadiyah is a latent danger that is able to deprave belief.[39]

On January 7, 2008, Member of National Commission on Human Rights *(Komnas HAM)*, Saharuddin Daming, stated that actions taken by law enforcers, including police, to arrest/ detain leaders of Al-Qiyadah and heretical sects, such as Ahmadiyah, do not violate human rights.

On January 8, 2008, Vice Chair of Provincial Legislative Assembly *(DPRD)* of West Sumatra, H. Mahyeldi Ansharullah,

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[36] On June 9, 2008, Vice President, M. Jusuf Kalla, said that Joint Ministerial Decree on the Restriction to Ahmadiyah has been in conformity with the Constitution.

[37] A release which was issued on August 5, 2008.

[38] Result of documentation, as reported in www.antara.co.id.

[39] Result of documentation, as reported in www.pk-sejahtera.org.

SP, acted intolerantly by expressing his opinion which supported the action done by Committee for the Enforcement of Islamic Sharia *(Komite Penegak Syariat Islam*/KPSI) of West Sumatra to urge the Presidency of SBY-JK to immediately dissolute Ahmadiyah. On June 19, 2008, Chair of DPRD of West Sumatra, H. Leonardy Harmainy, also acted intolerantly by stating his opinion, "Ahmadiyah sect is forbidden and is included in non-Moslem, and urge followers of JAI to stop the dissemination, interpretation and activities that are heretical from the principles of Islamic teaching."

On November 13, 2008, Mayor of Padang, Fauzi Bahar, acted intolerantly by stating, "Government of Padang Municipality will remove board name of Ahmadiyah followers." Intolerant action was also done by Head of Regional Office *(Kanwil)* of Department of Religious Affairs of Central Kalimantan, H. Anshari (on June 14, 2008), and Mayor of Cimahi (on June 10, 2008).

On January 17, 2008, Governor of West Sumatra acted intolerantly by requesting MUI and Monitoring Body of Religion and Belief *(Pakem)* of West Sumatra to re-evaluate Ahmadiyah teachings in West Sumatra. Several intolerant actions were also conducted by some other officials.

The State, through its apparatus, did eight (8) violations in the form of **PROHIBITING WORSHIP AND RELIGIOUS ACTIVITY.** Regent of Sukabumi, on April 29, 2008, prohibited activities in six Ahmadiyah's worship places in Sukabumi: Al Furqon Parakan Salak Mosque, Mubasirin Mosque at Ciletung Hamlet, Lebak Sari Village, Parakan Salak District, Ar-Rahman Mosque at Cigombong Hamlet, Warung Kiara Village/District, Al

Barokah Mosque at Panjalu Hamlet, Karawang Village, Sukabumi District, Al Huda Mosque at Bojong Lowa Hamlet, Sukamantri Village, Cisaat District, and Al Fadhol Mosque at Simpang Sangit Hamlet, Bojong Jengkol Village, Jampang District.

On June 25, 2008, District Attorney *(Kejaksaan Negeri)* of Tasikmalaya forbade Ahmadiyah community perform Friday prays and do activities in mosques. On June 10, 2008, Mayor of Cimahi, HM Itoh Tochija, requested Ahmadiyah community in Cimahi to stop their activities, arguing that it was not in conformity with the Joint Ministerial Decree. The Mayor also asked Muspida in Cimahi to be firmer and take real actions if violations happen. On June 19, 2008, at Tangerang, Banten, Chair of Neighborhood Association *(RT)*, Village Chief and Head of Tangerang District prohibited Ahmadiyah followers to perform prayer and stopped the activities of Ahmadiyah followers in Tangerang District by force.

On April 30, 2008, at Cianjur, West Java, Head of Sub-precinct Police *(Kapolsek)* of Cirajang, Cianjur, forbade Ahmadiyah followers to perform Friday prays. On March 14, 2008, at Mataram, West Nusa Tenggara, Monitoring Body of Religion and Belief *(Pakem)* of West Nusa Tenggara prohibited followers of Ahmadiyah Transito House to perform pray differently. On June 14, 2008, in Central Kalimantan, Head of Regional Office *(Kanwil)* of Department of Religious Affairs of Central Kalimantan, H. Anshari, requested Ahmadiyah followers to stop disseminating their belief.

The State, through its apparatus, conducted seven (7) violations in the form of **PROHIBITON OF RELIGIOUS SECT/**

BELIEF;[40] among others, on June 9, 2008, Minister of Religious Affairs, General Attorney, and Minister of Home Affairs of Republic of Indonesia issued Joint Decree of Minister of Religious Affairs, General Attorney, and Minister of Home Affairs of Republic of Indonesia on Warning and Order to Followers, Members, and/ or Board Members of Jamaah Ahmadiyah Congregation *(Jemaat Ahmadiyah Indonesia/*JAI*)* and Citizens. On September 1, 2008, Governor of South Sumatra forbade Ahmadiyah community in South Sumatra by issuing Decree (SK) of Governor of South Sumatra No. 563/ KPTS/ BAN. KESBANGPOL & LINMAS/2008.

On January 23, 2008, after the insult done by local citizens, officials from Police Department, Court, Regency and DPRD of Belawan North Sumatra froze Thariqat Satariyah Sahid teaching group. On October 8, 2008, Bureau of Department of Religious Affairs of Tasikmalaya, through its decision, shut a ritual done by more or less 200 people from *Amanat Keagungan Ilahi (AKI)* community in Ranggawulung Cave, Setiawaras Village, Cibalong District, Tasikmalaya Regency.

The State, via its apparatus, did one (1) violation in the form of P**ROHIBITION TO BUILD WORSHIP PLACE**. On April 30, 2008, at Cianjur, West Java, Head of Sub-precinct Police *(Kapolsek)* Cirajang, Cianjur, prohibited Ahmadiyah followers to build a worship place that was similar to mosque.

The State, through its apparatus, conducted three (3) violations in the form of **COMPULSION OF A BELIEF AND**

[40] Prohibition of a sect/ belief is giving a condemn as heretical to those who have different belief. When a person Is condemned as a heretical, his/ her sect is also regarded as heretical. For instance, the belief of Lia Eden, and some other cases.

CHANGING SOMEONE'S BELIEF. On July 1, 2008, KUA of Department of Religious Affairs of Danau Kembar District, West Sumatra, denied to issue the Marriage Certificate of an Ahmadiyah follower, unless the person changes his belief. On June 30, 2008, at Bima, West Nusa Tenggara, Village Head in Bima forced an Ahmadiyah follower to sign a statement, stating that he is leaving Ahmadiyah. On September 12, 2008, at West Lombok, Bureau of Department of Religious Affairs of West Nusa Tenggara urged Ahmadiyah community to obey the Joint Ministerial Decree by issuing a written statement of returning to the 'real' Islam.

The State, via its apparatus, did eight (8) violations in the form of giving **PERMISSION TO SHUT** and permission to remove organization's board name by civilians; among others, on June 18, 2008, officials of Police Department, Regency, Court and DPRD of Cianjur gave permission to shut an Ahmadiyah mosque at Panyairan Hamlet, Sukadana Village, Campaka District, Cianjur, by the mass of Association of Islamic Student in Unity *(Himpunan Santri Bersatu/*HISAB) of Cianjur, and an Ahmadiyah mosque at Rawaekek Hamlet, Sukadana, Campaka District, Cianjur, West Java.

On June 20, 2008, officials of Police Department, Regency, Court and DPRD of Cianjur granted permission to shut an Ahmadiyah mosque at Jl. Dr. Muwardi, Cianjur. On June 18, 2008, officials of Police Department, Regency, Court and DPRD of Cianjur gave permission to shut an Ahmadiyah mosque at Jl. Raya Bandung, Cipeuyeum Area, Bojong Picung, Cianjur, West Java.

Pada 20 Juni 2008, aparat Kepolisian Cianjur memberikan

izin penyegelan atas masjid Ahmadiyah Desa Cipeuyeum Kec. Ciranjang Cianjur. On June 27, 2008, Cianjur Police granted permission to remove the board name of an Ahmadiyah mosque in Cianjur. On June 18, 2008, officials of Police Department, Regency, Court and DPRD of Cianjur gave permission to shut an Ahmadiyah Boarding School at Ciparay Hamlet, Cibeber District, and at Sukadana Village, Campaka District, Cianjur, West Java.

The State, through its apparatus, did 2 violations by **DAMAGING WORSHIP PLACE** and demolishing worship place by force. On June 14, 2008, Trantib of Bekasi Municipal demolished by force 3 churches (HKBP, Gekindo and GPDI) situated at Jl. Melati Ujung, Tambun, East Bekasi. Mayor of Padang, Fauzi Bahar, on June 13, 2008, removed Ahmadiyah Padang's board name at Jl. Haji Agus Salim, Padang. Before removing the board name, the Mayor, MUI and Department of Foreign Affairs of Padang Municipality performed Friday pray with Ahmadiyah followers at an Ahmadiyah's mosque.

The State, via its apparatus, committed 5 violations by **SEALING WORSHIP PLACE.** On June 18, 2008, Police sealed Ahmadiyah's mosques at Cicakra, Cianjur, at Baros Village, Cianjur, and at Neglasari, Cianjur. Police also involved in the sealing of worship place at Sukadana Village, Cempaka, Cianjur (June 18, 2008) and at Jl. Muwardi, Cianjur (June 20, 2008).

The State, through its apparatus, did one (1) violation in the form of **SEALING AND AHMADIYAH'S BOARDING SCHOOL (MADRASAH).** On June 18, 2008, Cianjur Police sealed Ahmadiyah's Boarding School in Cianjur.

The State, via its apparatus, is responsible of one (1) violation

by **DAMAGING RELIGIOUS PROPERTY.** On August 26, 2008, Satpol PP of DKI Jakarta damaged Indonesian Christian Students Movement *(Gerakan Mahasiswa Kristen Indonesia*/GMKI) and Indonesian Communion of Churches' (*Persekutuan Gereja-gereja di Indonesia/PGI)* office.

The State, through its judicature apparatus, committed 25 violations by having **TRIAL AGAINST THOSE WHO ARE ALLEGED AS HERETICAL,** ranging from arresting, detaining, investigating, having trial in the court, to giving verdict to a couple of people who are alleged as heretical and has dishonored/blasphemed a religion. Included in this category are, among others, the arrest of Lia Eden (December 15, in Jakarta), the arrest of Oktaria Tobing (May 2, in Padang), The Savior of Latter-Day *(Sang Penyelamat Akhir Zaman/)* Imam Mahdi, alias Supriadi, along with his followers (September 19, in Deli Serdang, North Sumatra), the arrest of Chandra (August 1, in Lampung), the arrest of Dudung, alias Mama Dudung Dawuk Dzatullah Wujudullah bin Subhanallah Wabihamdih (April 28, Sukabumi, West Java), the arrest of three followers of Madi (April 5, Central Celebes), and the arrest of Suhendra, Chair of *Perguruan Pencak Silat Panca Daya (PPS PD*) (August 28, Tasikmalaya, West Java).

In 2008, there were some people accused and sentenced at the court; among others were accusation against Edi Ridwan, Leader of New Model of Islam (Islam *Model Baru/IMB)* sect, and his three followers, Amir, Sudibyo, and Tarsito (March 27, Jambi), accusation and verdict against Ishak Suhendra who was sentenced four years in prison (October 28, Tasikmalaya), verdict against Al-Qiyadah Al Islamiyah Mushaddeq that was sentenced four years in prison (April 23, Jakarta), verdict against

the followers of Al-Qiyadah, Dedi Priadi (44 years old) and Gerry Lufthi Yudistira (20 years old), who were sentenced three years in prison (May 2, Padang). Abdul Racham, a follower of Salamullah, was executed after the appeal of Supreme Court decided that he is guilty (January 7, 2008).

The State, via its apparatus, did one (1) violation by SHOOTING TO DEATH a citizen who was accused of committing dishonor/blasphemy against religion. On April 5, 2008, at Central Celebes, Police shot Madi to death. Madi was presumed as a leader of heretical sect.

The State, through its apparatus, committed three (3) violations in the form of **ISSUANCE OF REPRESSIVE AND DISCRIMINATIVE POLICIES** against Ahmadiyah. On June 9, 2008, Ministry of Religious Affairs, Ministry of Home Affairs, and Attorney-General of Republic of Indonesia issued Joint Ministerial Decree Number 3 Year 2008, No.: KEP-033/A/JA/6/2008, No.: 199 Year 2008 on Warning and Order to the Followers, Members, and/or Board Members of Jamaah Ahmadiyah Congregation *(Jemaat Ahmadiyah Indonesia/JAI)* and Citizens. On September 1, 2008, Governor of South Sumatra also issued Decree (SK) of Governor of South Sumatra No. 563/ KPTS/ BAN. KESBANGPOL&LINMAS/2008, which prohibits the existence of Ahmadiyah in South Sumatra. On November 20, 2008, Monitoring Body of Religion and Belief *(Pakem)* of Padang Municipality recommended the prohibition and removal of board name of Ahmadiyah in Padang Municipality to the Mayor of Padang.

The State, through its apparatus, conducted six (6) violations

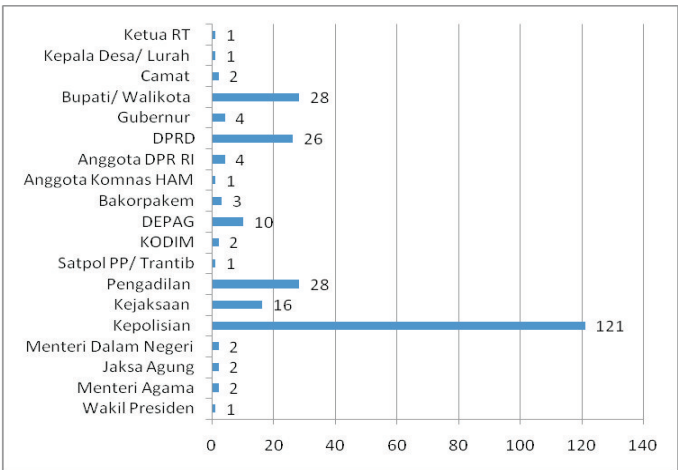
by **OBSERVING AND SPYING** the followers of Ahmadiyah; among others, it was conducted by District Attorney (Kejaksaan Negeri) of Solok, Chair of Monitoring Body of Religion and Belief (Pakem) of Solok, and Head of Section intelligence (Kasi Intel) of District Attorney *(Kejaksaan Negeri)* of Solok. On October 25, 2008, District Attorney *(Kejaksaan Negeri*) of Solok observed and spied the reattachment of Board of Ahmadiyah Padang. On May 19, 2008, Provincial Attorney of North Sumatra monitored the activities of Ahmadiyah community by spying on them. On June 10, 2008, after the issuance of Joint Ministerial Decree on Ahmadiyah, Provincial Police *(Polda)* of West Java spied on the activities of followers of Ahmadiyah West Java. On March 14, 2008, in Mataram, West Nusa Tenggara, Monitoring Body of Religion and Belief (Pakem) of West Nusa Tenggara stated that they "keep monitor the activities of 134 followers of Islam Ahmadiyah sect that are in the shelter of Transito House in Mataram".

The State, via its apparatus, did one (1) violation by **DISCONTINUING THE LEARNING ACTIVITY BY FORCE**. On June 18, 2008, Police of Sukabumi, West Java, stopped the learning activity of Ahmadiyah students.

Under the category of by omission, the State, through its apparatus, did 39 violations by **OMITTING VIOLENCE** and 50 violations by **IGNORING LEGAL ACTION ON CRIMINAL ACTIONS** conducted by citizens. In every violence action conducted by citizens, the state authority generally omitted the action happened. As the protector of society, Police is obliged to give protection to every citizen whose rights are violated by other citizens. Only on the siege incident of Ahmadiyah's

mosque, Al Mubarak, in Jl. Mohammad Kahfi II, Jagakarsa, South Jakarta, happened on August 27, 2008, Police was able to prevent the incident of violations, after negotiated. The State, via its law enforcers, also did not process legally the perpetrators of violence. Only the incident of June 1, at Monas, Jakarta, that was followed up by taking legal action by the Police.

The perpetrators of 188 violations of freedom of religion/ belief were in various State institutions, as well as in the individuals of State officials. The institutions doing the most violations were Police (121), Regent/Mayor (28), Court (26), and Provincial Legislative Council (DPRD) (26).

Graphic 7:
State Institution/Officials that committed violations

The difference of number of incidents and perpetrators may occur because in an incident, there are several perpetrators. In the case of permission to seal a worship place, for instance,

elements of Consensus of District Leaders *(Musyawarah Pimpinan Kecamatan/Muspida),* i.e. Head of District, Precinct Police and Koramil were involved in giving the permission. As well, on the issuance of Joint Ministerial Decree on the Restriction of Ahmadiyah, the Ministry of Home Affairs, Attorney-General, and Ministry of Religious Affairs took a joint action.

Other than the record on the involvement of Police in a couple of sealing actions, and giving permission to seal, the high number of Police as perpetrators of violations of freedom of religion/belief was caused of the Police's duty and function which are basically to give protection to every citizens; and if a criminal take place, such as violence based on religion, and Police does not take preventive action, it means that the Police has ignored its duty. As well, as a law enforcer, the Police should take actions and process legally everyone who conducted a criminal, and since the Police do nothing, Police is also recorded as committing violations due to its ignorance to take legal action.

Nevertheless, it should be noted that the high number of Police as perpetrators should not be seen separately from the bigger framework. As a law enforcer, Police generally implements any law/policy produced by the State, although the law/policy is discriminative.

3.3.2. Criminal Action and Intolerance of Citizens

Under the category of violations in the form of criminal actions of freedom of religion/belief, the perpetrators are citizens, individuals, communities who are obliged to obey the criminal law. Any destruction, arson, threat, et cetera, which are

compiled in this report, are qualified as criminal act. The legal responsibility to obey the law should be borne by individual or community committed violence.

This report recorded 88 criminal actions, which were committed by citizens, either individually of in community. Meanwhile, the number of society's actions of intolerance was 91. The perpetrators of intolerance were generally figures of Islamic organizations that strongly prohibited Ahmadiyah. In cases other than Ahmadiyah, figures of Islamic organizations were also noted as the purveyor of intolerance. The other actors were members or leaders in pesantren, also in the businesses, and student organizations.

Table 3:

Number of Violations of Freedom of Religion/ Belief conducted by Society

No.	Type of Violations	Total
I	**CRIMINAL ACTIONS BY CITIZENS**	**88**
1	Threatening of violence	4
2	Discriminating at workplace	2
3	Reporting people/group who is allegedly heretic	7
4	Prohibiting religious practice	3
5	Prohibiting particular sect	1
6	Prohibiting building place of worship and properties	1
7	Attempt of converting religious belief by force	3
8	Arson of place of worship	3
9	Removing identity of religious center	6
10	Discontinuing religious activity by force	3
11	Damaging the property of people alleged as heretical	5

12	Damaging of place of worship and religious center	13
13	Evicting someone	1
14	Sealing Islamic boarding school (madrasah)	4
15	Sealing place of worship and religious center	19
16	Attacking peace action	1
17	Attacking religious activity	1
18	Attacking property of allegedly heretic people	1
19	Attacking place of worship	1
20	Deviating religious and belief group	6
21	Confiscating and burning religious documents	3
II	**INTOLERANCE OF THE CITIZEN**	**91**
	Total	**179**

Under the category of criminal actions conducted by citizen/ community, this report noted 88 criminal actions in 21 forms.

There were four (4) acts of crime in the form of **THREAT OF VIOLENCE** committed by the citizen/community. On June 13, the threat of attack and sealing came from FPI and MMI aimed to an Ahmadiyah's mosque in Kalisoro Village, Tawangmangu, Karanganyar, Central Java. On April 28, there was protest to reject Ahmadiyah in Mubarok campus, property of Ahmadiyah people, in Jalan Raya Kemang, Bogor, Jawa Barat. Mass of Indonesia Islamic People Movement *(Gerakan Umat Islam Indonesia)* led by Abdul Rahman Assegaf stated, "will not be responsible if there is going to be an anarchy in Ahmadiyah areas by anti-Ahmadiyah people." On July 7, Ahmadiyah members also received a threat of arson from a group of people aimed at Ahmadiyah's mosque in Ciamis, West Java. On June 5, Ar-Rahman Mosque, owned

by Ahmadiyah, in Cogombong Market, Warungkiara District, Sukabumi, West Java, was threatened to be burnt down and destroyed by a group of citizens.

There were two (2) forms of **DISCRIMINATION AT WORK** based on religion/belief. On October 5, a member of Ahmadiyah, who worked in a bank in Yogyakarta is forced to sign a letter that he is no longer a member of Ahmadiyah by the Jakarta head office. On April 21, Wine Dwi Mandela was disemployed as nurse in Physiotherapy, Medical Rehab Department, Mitra Keluarga Hospital, Bekasi, West Bekasi. She was forced to quit her job because of using headscarf and brooch. Although the management decided to accept her back, Wine is no longer working there.

There were seven (7) **REPORTS** on individual/community which were alleged as heretical, such as; Nursyahidin was reported to Provincial Police (Polda) of Banten (January 18) by the local society. On June 18, West Sumatra, Ahmadiyah was reported to Padang Municipal Police (Poltabes) based on the allegation of dishonor of religion by certain elements of society, Muhammadiyah, DPW PKS West Sumatra, BEM UNP, MUI of West Sumatra, DDII, MTKAAM, IKADI of West Sumatra, Ar Risalah, Paga Nagari, FMPI of West Sumatra, Fakta of West Sumatra, DDI of West Sumatra, and HTI. The report on Ahmadiyah was also submitted on June 18 by

TAMS (Moslem Advocacy Team West Sumatra): this organization has the similarity with the local organizations in other area. The Ahmadiyah issue obtains quiet big attention from this organization. The working territory of this organization is only in West Sumatra.

KPSI to Bakor Pakem of West Sumatra.

In June 2008, the society reported Syaiful Anwar, leader of Ahmadiyah of Padang Community, had allegedly dishonor religion in his sermon on June 13, 2008. The Friday prayer on June 13 was attended by the Mayor of Padang, MUI of Padang, and several superiors of Padang Municipality.

On June 25, Sadek Abdullah was also reported by several member of society, of his sect of Amanah, which was alleged as a heretical sect. Sadek was reported to the Head Division Inter-organization Kesbangpol Linmas of Ternate, North Maluku. On November 2, several members of citizen brought and reported Suraji and his followers to Precinct Police (Polres) of Deli Serdang, North Sumatra. Suraji allegedly disseminated a heretical sect by claiming as the prophet of the latter-day and commanding his followers to not fast in the month of Ramadhan. By the end of 2008, December 15 in Jakarta, Abdurrahman Assegaf reported the leader of God Kingdom, Lia Eden, and her followers who were alleged as disseminating heretical sect to Provincial Police (Polda) of Metro Jaya.

There were three (3) **PROHIBITIONS OF RELIGIOUS PRACTICES AND ACTIVITIES**. Among others is experienced by Ahmadiyah, in West Nusa Tenggara (April 19), in Ciputat Tangerang (June 5); and prohibition to perform Idul Fitri 1429 Hijriyah prayer in Ciputat Tangerang (19 September).

There was one (1) **PROHIBITION OF RELIGIOUS SECT** did by members of citizen on October 8. The decision of MUI of Tasikmalaya (collaborating with Department of Religion) stated that they were closing the ritual performed by 200 people from

the group of *Amanat Keagungan Ilahi (AKI)* in Ranggawulung cave, Setiawaras Village, Cibalong District, Tasikmalaya Regency, conducted in a cave, followed by ordination ceremony.

There was one (1) **PROHIBITION OF BUILDING WORSHIP PLACE.** On October 26, around 1,000 of member of Moslem Solidarity Forum *(Forum Solidaritas Umat Muslim)* in Cinere, Gandul, Pondok Cabe, Pangkalan Jati, and nearby areas, practiced a prayer to reject the building of HKBP church in Jl. Bandung, Cinere, Depok. The people reasoned that the church construction was not complying with the regulation (PBM) of Building Place of Worship and disregarding the regulation of the land use, to build school. Actually this church had already received the right to build (IMB) since 1998 issued by the Bogor Local Government *(Pemda)* (at that time Cinere was a part of Bogor territory). Nevertheless, on July 8, 2000, Local Government of Depok sent a letter to the Committee of Construction of HKBP Pangkal Jati to stop the church construction, to avoid the unwanted effects.

There were three (3) actions of **FORCING AND CONVERTING OF BELIEF** experienced by several people. On June 28, in Garut, West Java, a prominent religious figure forced Ahmadiyah to pray together with figures of different belief. Meanwhile, on July 21, in Tasikmalaya, West Java, a mother was forced by her own son to quit Ahmadiyah. On October 5, in Yogyakarta, the force against an Ahmadiyah member was experienced by a bank employee who should sign the letter of resignation from Ahmadiyah by the leader of the company.

There were three (3) **ARSON OF WORSHIP PLACES**. On

January 13, in West Lombok, West Nusa Tenggara, there was arson in Sangkareang temple belonged to Buddhist members. On April 28, there was arson on Ahmadiyah's mosque and Al Furqon Madrasah belonged to Jamaah Ahmadiyah Congregation (JAI) in Parakan Salak Kampong, RT 02/ RW 02, Parakan Salak Village/ District, Sukabumi Regency conducted by F*orum Komunikasi Jamiatul Mubalighin (FKJM*) of Parakan Salak. On May 20, in Purwakarta, West Java, there was arson of education facility building and house functioned as the church of Protestants.

There were six (6) **REMOVALS OF INDENTITY OF RELIGIOUS ACTIVITY CENTERS.** On June 27, there was a removal of the board name of Ahmadiyah's Mosque at Cianjur by a group called *GARIS* of Cianjur, East Java. On January 12, there was also throwing and the board removal of IJABI (Ikatan Jamah Ahlul Bait Indonesia/Indonesian Jamah Ahlul Bai Union) of Kebon Roek Mataram, West Nusa Tenggara, which at that time the 9th memorial night of the passed away of Prophet Mohammad's grandsons Hasan and Husain.

The board name of Ahmadiyah was also taken down by force by the citizens on June 18, in Pampangan, West Sumatra. On July 19, in Padang Pariaman West Sumatra, after taken down, the Ahmadiyah board was then thrown out to the river while being watched by the Governor of South Sumatra who accidentally passed by. On July 20, the destruction of board name

KPSI (Komite Penegak Syariat Islam/ Islamic Sharia Enforcer Committee) of West Sumatra: this organization was established in Padang, West Sumatra, on 28 Juli 2008, with H. Irfianda Abidin as the leader. Some attacks were done in the property of Al Qiyadah leader, always under the command of KPSI.

of Ahmadiyah of Padang Pariaman, removed by the people of *KPSI (Komite Penegak Syariat Islam*/Islamic Sharia Enforcer Committee) of Padang West Sumatra. On September 26, the board name of and a greeting banner of fasting at the secretary office of Ahmadiyah of Yogyakarta were also taken down by tens of Islamic Mujahidin Troop *(Laskar Mujahidin Islam/LMI)* of Yogyakarta.

There were three (3) **FORCED DISCONTINUATION OF RELIGIOUS ACTIVITIES.** This act happened on August 17 to the community of GPDI of Pondok Ranggon, Cipayung, East Jakarta conducted by 200 people. Also on June 11, there was the discontinuation of Ahmadiyah's activity by force in South Semarang Region by several citizens of Semarang, Central Java.

On January 13, there was discontinuation of Asyura Day celebration which was attended by 40 people, conducted by 100 members of Ahlussunnah Waljamaah, led by H Awaludin, H Zen Alkaf. The celebration was performed by Syiah Al Qubra Foundation, Mataram, West Nusa Tenggara.

There were five (5) **DESCTRUCTION OF PROPERTIES OF THE PEOPLE WHO WERE ALLEGEDLY HERETICAL**. On August 1, at Cianjur, West Java, a house was surrounded and attacked by communities, which are people of FPI and IKFAF. On August 28, residents of Jl. Raya Garut-Tasikmalaya destructed the house of Ishak Suhendra, the person who was allegedly disseminated heresy in Tasikmalaya, West Java. On May 13, in West Lombok NTB, the society pelted the house of H. Muhammad Musfihat who allegedly disseminated heresy.

On September 22, there was house destruction of the leader

of Tauhid Order H. Jul by communities, at Berembeng Timur Orchard, Karang Bayan Village, Lingsar District Lombok Barat Regency. On October 24, Harian Metro Tapanuli (newspaper office) in Jalan Horas No. 27 Sibolga North Sumatra was destructed by around a thousand of people from Bara Api (Barisan Rakyat Anti Penindasan Islam/Front of Anti Islam Oppression People). This newspaper was considered to make joke about Islamic people.

There were thirteen (13) **DESTRUCTIONS OF PLACES OF WORSHIP AND CENTERS OF RELIGIOUS ACTIVITIES,** such as: on April 18, there was destruction of Ahmadiyah's mosque, Baiturrohim, in Babakan Sindang Kampong, Cipakat Village, Singaparna District Tasikmalaya Regency, West Java. On April 21, there were hundreds of people and coalition of Islamic social organizations in Banjar and Ciamis who destroyed Istiqamah Mosque which was owned by Ahmadiyah. On April 21, there was also destruction of Ahmadiyah's mosque in Ciamis, West Java. On April 30, there was destruction of An-Nur Mosque belonged to Ahmadiyah community in Ciaruteun Udik village, Cibungbulang District, Bogor, West Java.

On June 20, there was destruction and arson of building of learning and house functioning as the church of Christian/ Protestant Church Community of Purwakarta, West Java.

On June 27, there was also destruction of fence and window belonged to Ahmadiyah's mosque in Cianjur, conducted by GARIS of Cianjur, West Java. On the same date, there was destruction on Ahmadiyah's campus, Al Mubarok, at Bogor, West Java. On December 19, hundreds of people from GARIS also attacked and destroyed the Ahmadiyah's mosque, Mande,

at Cianjur, West Java. On October 5, there was destruction of an Ahmadiyah's mosque, Mubarak, in Sukamaju Kampong, Seimenanti Orchard, Tanjung Medan Village, Pujud District, Rokan Hilir Regency.

On January 13, there was also destruction of Sangkareang Temple. This happened a moment before the arson of a temple in West Lombok, West Nusa Tenggara by a group of people.

Around February, there was also destruction of a mosque in Aur Kampong, Medan, Maimun District by the developer because it hindered the development of Flood Project of City of Medan.

On January 28, there was destruction of Al-Istiqamah Mosque belonged to Ahmadiyah community located in Sadasari Hamlet, Argapura District, Majalengka Village, West Java by tens of people from Anti Immoral Movement *(Gerakan Anti Maksiat/GAM)* and Islam Unity (Persatuan Islam/Persis). On June 11, there was an attack and destruction of Ahmadiyah's secretariat of South Kalimantan, in Jalan Dahlia Kebun Sayur, Banjarmasin Tengah District, by 200 people. One of the youth figures participated was M. Hasan, who was an ex-KNPI leader in South Kalimantan.

There was one (1) **EVICTION OF SOMEONE.** On July 2, there was an eviction of Chandra's family, a man who claimed to be a prophet since 2002. Chandra lived in Jl. Terusan Enim Rajawali, Bandar Lampung. Chandra's family is now migrated to a family house at Sukarame District, Bandar Lampung.

There were four (4) **SEALINGS OF SCHOOLS.** On June

18, in Cianjur, West Java, there was a sealing of Ahmadiyah's Boarding School *(Madrasah)* of Cianjur by the society. On the same date, there was also a sealing of a Madrasah in Ciparay Hamlet, Cibeber District, Sukadana Village, Campaka District, Cianjur by Association of Islamic Student in Unity *(Himpunan Santri Bersatu/HISAB)* of Cianjur. The sealing had stopped the learning process and the student could no longer study. Still on the same date, HISAB of Cianjur also sealed an Ahmadiyah's Madrasah at Rawaekek Kampong, Sukadana Village, Campaka District, Cianjur. The sealing also happened on July 18 by the society and MUI, by closing down an Ahmadiyah's Madrasah at Parakansalak, Sukabumi, by force.

There were nineteen (19) acts o**f SEALING OF PLACE OF WORSHIP AND RELIGIOUS ACTIVITY CENTER**, such as: on June 13, there was sealing of Jamaah Ahmadiyah Congregation's (JAI) secretariat of Bogor at Jl. Perintis Kemerdekaan, Central Bogor, Bogor Municipal, West Java, by FUI – Bogor. On June 27, Islamic Troop Commando *(Komando Laskar Islam),* Islamic Reform Movement *(Gerakan Reformasi Islam),* People Preacher Assembly *(Majelis Dakwah Umat),* Garda Hasmi, Islamic Defender Front *(Front Pembela Islam/FPI)* also sealed Ahmadiyah's campus, Al Mubarok, at Bogor, West Java and then the mass sealed and removed the Al-Fadhl Mosque board name in Jl. Perintis Kemerdekaan, Bogor Municipal.

On June 11, there was an attack on Ahmadiyah secretariat in South Kalimantan in Jl. Dahlia Kebun Sayur, Central Banjarmasin District, by 200 people. After being destroyed, this place was also sealed.

On July 30, there was also a confiscation of an Ahmadiyah's mosque, Mahmud, by the citizens, MUI, FPI, in Talaga Kampong, Cianjur, West Java. On July 30, there was a sealing of Ahmadiyah's mosque, Taher, at Sindangkerta, Cianjur, West Java, by MUI, FPI and the citizens. On August 1, there was also a sealing of Ahmadiyah's Mushola (small mosque) in Talaga Kampong, Cianjur, West Java, by some citizens, FPI and IKFAF.

On August 23, there was a confiscation of Ahmadiyah's Mosque, Al Hidayah, in Jl. Raya Muchtar, Sawangan, Depok Municipal, by people joined in Islamic People Forum (Forum Umat Islam/FUI) of Depok Municipal.

On August 27, there was a siege of Al Mubarak, in Jl. Mohammad Kahfi II RT 07/01, Jagakarsa, South Jakarta by around a hundred of FPI people after their 10th Milad (grand meeting) under the lead of head of DPW FPI South Jakarta, Novel Bamu'min. Those mass asked that before the fasting month, the mosque should no longer be used as mosque and the board name should be removed.

> HISAB (*Himpunan Santri Bersatu*/ Association of Islamic Student in Unity), Cianjur: this organization claimed as an Islamic student association. HISAB's area of work is in West Java. With Garis, this organization often voices issues related with Sharia law. This association is led by H. Aceng.

On June 18, there was a couple of sealing of Ahmadiyah's mosques: a mosque in Baros Village, Cianjur by hundreds of people and MUI; a mosque in Cicakra, Cianjur, by MUI and hundreds of people; an Ahmadiyah's mosque in Sukadana Village, Campaka District, Cianjur by tens of people from HISAB

of Cianjur, West Java; an Ahmadiyah's mosque at Panyairan Kampong, Sukadana Village, Campaka District, Cianjur by tens of people from HISAB of Cianjur; an Ahmadiyah's mosque in Rawaekek Kampong, Sukadana Village, Campaka District, Cianjur by HISAB of Cianjur.

On June 20, there was a couple of sealing of Ahmadiyah's mosque: a mosque at Jln Dr. Muwardi, Cianjur Municipal, by around one hundred of people from Islamic Reform Movement (GARIS); an Ahmadiyah mosque at Cipeuyeum, Bojong Picung by Islamic Reform Movement (GARIS) and Association of Islamic Student in Unity (HISAB) of Cianjur; an Ahmadiyah's mosque at Cipeuyeum Village, Ciranjang District, Cianjur by some citizens.

GARIS (*Gerakan Reformasi Islam*/Islamic Reform Movement): this organization has the same vision with other Islamic organizations, i.e. to bring down Ahmadiyah. This organization is led by H. Cep Hermawan, SE, MBA. The focus of work of this organization is in West Java.

There was an **ATTACK AGAINST A PEACE ACTION** on June 1, Jakarta, by Islamic Commando Troop and Islam Defender Front (FPI) to a group who voiced the freedom of religion/belief, National Alliance for Freedom of Religion and Belief *(Aliansi Kebangsaan untuk Kebebasan Beragama dan Berkeyakinan/* AKKBB).

There was an **ATTACK TO A RELIGIOUS ACTIVITY** on January 22. The attack was conducted by 300 local citizens to Thariqat Satariyah Sahid who were praying in Bagan Deli Village *(Kelurahan),* Medan Belawan District, North Sumatra.

There was an **ATTACK TO PROPERTY OF PEOPLE**

ALLEGEDLY HERETIC which happened on September 22, to the house of Tauhid Order in Berembeng Timur Orchard, Karang Bayan Village, Lingsar District, West Lombok Regency, West Nusa Tenggara.

There were three (3) **ATTACKS TO PLACES OF WORSHIP.** Besides the ban to practice the religion on August 17, the people of GPDI of Pondok Ranggon, Cipayung, East Jakarta were also attacked by 200 Islamic mass.

On October 11, there was an attack to the spiritual sect Sapta Dharma, Busono Temple Studio in Perengkembang Orchard, Balecatur, Gamping, Sleman Yogyakarta by FPI mass. An attack was also happened on October 30 to the Central Ahmadiyah's mosque in Jl. Balikpapan I Petojo Utara, Gambir, Central Jakarta by FPI.

There were six (6) **CLAIMS OF HERESY TO A RELIGIOUS OR BELIEF GROUP.** On October 8, Department of Religion and MUI of Tasikmalaya discontinued a ritual performed by 200 people of Order of Glorious Divinity *(Amanat Keagungan Ilahi/*AKI) in Ranggawulung Cave, Setiawaras Village, Cibalong District, Tasikmalaya Regency for the claim of heresy. They were banned because they were alleged as heretical.

On March 13, the heresy was also claimed by Prof. Sulaiman Abdullah of the Indonesia Ulema Council (MUI) of Jambi Province to the sect led by Edi Ridwan called New Islam Model *(Islam Model Baru/*IMB). On September 28, MUI of Tulungagung Regency, East Java stated that community of Al Muhdlor was heresy as they had no legal basis to decide the exact Ramadhan day.

On September 20, Suryadi, a citizen of Helvetia, Medan, North Sumatra, was also alleged as heretical as he claimed himself as the last prophet and the leader of the latter day. Suryadi and 14 of his followers were arrested by the police in Tanjung Moraw. The arrest was carried out when Suryadi and his followers were performing tarawih prayer.

On November 15, there was also claim of heresy to the published book, "Composition of Haj Ritual" by Drs. H. Amos, in Deli Serdang North Sumatra. The book was considered to discredit the Koran by adding the content of bible and Torah. MUI of North Sumatra issued a statement that the book content was a heresy and insulted the Koran.

On January 1, MUI of Klakah District, Lumajang Regency, through its fatwa considered the Green Maulid as heresy. Green Maulid is an annual routine the people of Tegal Randu to preserve the environment and local tradition as well to promote a travel destination which is Ranu (a lake).

There were three (3) **CONFISCATIONS AND BURNING OF RELIGIOUS DOCUMENT.** On June 18, the confiscation of Ahmadiyah books happened at Cianjur in Panyairan Hamlet, Sukadana Village, Campaka District, Cianjur by HISAB of Cianjur. The books of Ahmadiyah were also confiscated in July 2008.

Book burning also happened to Ishak Suhendra, the head of Pencak Silat School (PPS) Panca Daya, Tasikmalaya, when his house was destructed. His book, "Islam and Reality", was considered heretical.

Meanwhile, under the category of **INTOLERANCE**, this

report noted 91 actions of intolerance, conducted by religious figure, public figure, and other individuals.

Intolerance is a form of non-conducive act to the strengthening process of democracy and human rights. The high level of intolerance represented by the statements and intolerant actions, even creating hate crimes and condoning violence, is a bad capital to democracy and human rights.

Several acts of intolerance were destructive statements and condoning individuals or communities to carry out violence, such as:

On January 3, around 30 people from several social organizations and public figure Bukittinggi urged Local Government of Bukittinggi to be strict with Bethel church activity because it violates the existing law.

On January 4, in Jakarta, Islamic People Forum (FUI) as the combination of several Islamic organizations, through the letter to the government c.q. Attorney-General of Republic of Indonesia to ban Ahmadiyah in the entire Indonesia and to freeze the organization and close down all its activity centers.

In the early of March, at East Lombok, West Nusa Tenggara, there were conflicts of different call of Friday prayer time *(azan salat*) between the citizen and MMI. MMI became the victim of intolerance.

On April 22, in Jakarta, the General Secretary of Islamic Community Forum (FUI) M. Khaththath issued a statement, "Ahmadiyah is clearly not a part of Islam community, alias non-Moslem. If they insist to be a part of Moslem, they should

banish Mirza Ghulam Ahmad and the Kitab Tadzkirah. It is a fixed price."

On June 3, in Jakarta, the Leader of PBNU, Hasyim Muzadi stated, "This is not a problem of freedom of religion/belief, but a dishonor of certain religion, and this case, it is Islam."

On June 9, in Jakarta, the General Secretary of Nation Unity Party (PPP), Irgan Chairul Mahfiz, stated, "The Joint Ministerial Decree signed by the Attorney-General, Minister of Home Affairs, and Minister of Religious Affairs is actually not an answer to the demand of the dissolution of Ahmadiyah which has dishonored the religion."

On June 9, in Jakarta, KH Nur Muhammad Iskandar, Leader of *Pondok Pesantren Asshiddiqiyah* stated, "If we do not want to be considered as the crony of United Sates, the government shall soon dissolute Ahmadiyah; if not, the President will bear the responsibility in front of assembly of Allah."

On June 10, in Jakarta, the Leader of Indonesia Ulema Council *(MUI)*, Amidhan, stated, "The government should destroy the Ahmadiyah attributes, including banning 46 book titles of Ahmadiyah teaching as the right and consequent implementation of the Joint Ministerial Decree on the restriction of Ahmadiyah's activities."

On June 11, post joint Ministerial Decree, in Jakarta, the Leader of Fatwa Commission of Indonesia Ulema Council *(MUI)* Ma'ruf Amin stated, "Ahmadiyah will be dissolved if their community disseminates their belief to the society."

On July 11, in Jakarta, the Leader of Fatwa Commission of

Indonesia Ulema Council (MUI), KH Ma'ruf Amin stated, "The report of International Crisis Group (ICG) which stated that MUI as a very dangerous body is a provocation and aimed to invest secular belief." The statement was a response to the ICG report stated that the MUI is a body which is very dangerous to the tolerance and democracy climate in Indonesia.

On June 19, in Jakarta, President of Prosperous Justice Party *(Partai Keadilan Sejahtera/PKS),* Tifatul Sembiring, stated, "President Susilo Bambang Yudhoyono should issue the Presidential Decree *(Keppres)* of Dissolution of Ahmadiyah."

On June 19, the Leader of Fatwa Commission MUI of West Sumatra, DR H Muchlis Bahar LC, MA (an expert witness in the further trial of the case of religious heresy in the State Court of Padang), stated, "Al Qiyadah has violated the principles of Islamic teaching (by referring to decree (SK) on fatwa no. 1/ Kpt.F/MUI-SB/IX/2007)."

On September 24, Director of Legal Aid (LBH) of Palembang, Eti Gustina rejected to attend a meeting, and rejected to support Ahmadiyah to sue the decree of Governor of South Sumatra.

On September 25, the support and appreciation from FUI, MUI, MMI, FPI, HTI, and FAKTA was given to LBH Palembang, of its bravery to reject the insistence from YLBHI to support Ahmadiyah to sue the Joint Ministerial Decree.

FPI (Islam Defender Front), this organization was established in 1998, until now still led by Habib Riziq Shibab. The main goal of FPI is the implementation of Islamic law (syariat). This Organization often conducted violence on its actions. It has several branches in the several provinces in Indonesia.

On October 26, there was a rejection by holding a huge prayer to deny the construction of a church in Cinere, Depok, West Java.

On November 26, in Jakarta, a couple of civil society organizations, such as Islamic Community Forum (FUI), NU, Muhammadiyah, FPI, ICMI, Indonesia Youth Movement, TPM, *Dewan Dakwah Islamiyah*, Board of Indonesian Mosque *(Dewan Masjid Indonesia)*, and Islam Union *(Sarekat Islam)* pursued Commission VIII to advice Minister of Religious Affairs and President Susilo Bambang Yudhoyono (SBY) to be consistent in implementing the Joint Ministerial Decree, because up until then there were still a lot of Jamaah Ahmadiyah Congregation's (JAI) activities in many cities in Indonesia.

On December 9, Islamic Community Communication Forum *(Forum Komunikasi Umat Islam)* of Central Maluku demanded the government to detach Welhelmina Holle's status as a teacher in SDN 4 Masohi because she has allegedly insulted Islam.

In general, there were four (4) clusters of **ACTOR OF CRIMINAL ACT AND INTOLERANCE:**

[1] **organization which is known as radical Islamic organization and the conveyer of the implementation of Sharia to positive law**. Included in this group were Islamic Defender Front (FPI), Hizbut Tahrir Indonesia (HTI), Islamic Sharia Enforcer

> FUI (Islamic Community Forum), this organization was established in August 2005, with the main goal to "preserve the (MUI) fatwa" related to pluralism and Ahmadiyah. Around 30 Islamic organizations joined this forum. After the forum they held a demonstration in front of Liberal Islamic Network (JIL) in Utan Kayu.

Committee (KPSI)[41] and alike, Indonesia Mujahidin Assembly (MMI), Islamic Community Forum (FUI) and Indonesia Ulema Council (MUI).

[2] **social organization with Islamic basis** which grows sporadically and ad hoc, whether based on the community as well as the operational area. Several organizations recorded were Islamic Reform Movement (GARIS), Association of Islamic Student in Unity (HISAB) of Cianjur, Moslem Advocacy Team West Sumatra (TAMS), etc.

[3] **unidentified group**. In several violent acts or intolerance, this type of group did not bring attribute of their organization.

[4] **individual**. For this category, usually are individual figures recorded in this report. The type of violation conducted by individual actor is intolerance.

Table 4:

List of criminals and intolerance actors

No	Name of Actor	Total
1.	Business area	3
2.	FAKTA	3
3.	FKJM (Forum Komunikasi Jamiatul Mubalighin/ Jamiatul Mubalighin Communication Forum) Parakan Bogor	2
4.	FMPI (Front Masyarakat Pembela Islam/Islamic Defender Societal Front)	2

[41] KPSI referred here is an organization operated in several areas in West Sumatra. In South Sulawesi and South Kalimantan there are KPPSI- Committee for the Preparation of Enforced Islamic Sharia. These two organizations have no structural relations.

5.	FMPI of West Sumatra	2
6.	FORMIS (Forum Organisasi Massa Islam/Islamic Mass Organization Forum)	3
7.	FPI (Front Pembela Islam/Islamic Defender Front)	27
8.	FUI (Forum Umat Islam/Islamic Community Forum)	12
9.	GAPAS (Gerakan Anti Pemurtadan dan Aliran Sesat/ Anti Apostatize and Heretical Sect Movement)	2
10.	GARIS (Gerakan Reformasi Islam/Islamic Reform Movement)	7
11.	HISAB (Himpunan Santri Bersatu/Association of Islamic Student in Unity) Cianjur	6
12.	HTI (Hizbut Tahrir Indonesia)	2
13.	IKFAF Cianjur	3
14.	KPSI (Komite Penegak Syariat Islam/Islamic Sharia Enforcer Committee)	12
15.	MMI (Majelis Mujahidin Indonesia/Indonesia Mujahidin Assembly)	12
16.	MTKAAM (Majelis Tinggi Kerapatan Adat Alam Minangkabau/Kerapatan Adat Alam Superior Assembly of Minangkabau)	3
17.	Muhammadiyah	3
18.	MUI (Majelis Ulama Indonesia/Indonesia Ulema Council)	42
19.	NU (Nahdlatul Ulama)	3
20.	Political party	4
21.	TAMAT (Tim Advokasi Martabat Ummat/Advocacy of Community Dignity Team) of South Sumatra	2
22.	TAMS (Tim Advokasi Muslim Sumatera Barat/Moslem Advocacy Team of West Sumatra)	5
23.	Other Islamic social organizations	55
24.	(Unidentified) society group	59
25.	Individual	20
	Total	295

3.3.3. Victims of Violations and the Affecting Impact

Violation of freedom of religion/belief in 2008 most of all impacted Ahmadiyah community. There were 238 violations affected Ahmadiyah community. Ahmadiyah was a victim of violation of freedom of religion in the form of: intolerance, state repression, state ignorance, and criminal act conducted by the citizens/community in the society.

In 2007, the followers of Al Qiyadah al Islamiyah experienced most violations of freedom of religion/belief. In 2008, this group experienced 4 violations. Meanwhile, the church community, Catholics or Protestants had 15 violations. This report noted 48 individual experienced violations, in the form of shooting of Madi, discrimination at the workplace, arrest, imprisonment, and court verdict happened to allegedly heretic people.

As in the SETARA Institute's Report on the Condition of Freedom of Religion/Belief in 2007, this report also recorded and counted the victim based on the act experienced by certain groups and individuals who were being the subject and or having the impact. Because the majority of victims were community, the number of individual victims was actually more than documented.

Table 5:

List of individuals/organizations who are victims of violation of freedom of religion/belief

No.	Individual / Group of victims	Total
1	Ahmadiyah	238
2	Individual	48
3	Al Qiyadah Al Islamiyah	4

4	Religious/belief sect	15
5	AKKBB	1
6	Member of PDS	2
7	Business area/ corporate	2
8	Et cetera	10
9	Church community	15
10	Thariqat Satariyah Sahid community	2
11	Syi'ah community	2
12	Salamullah community	5
13	Nursyahidin and his follower	2
14	Ahmadiyah students	17
15	Follower of Temple of Buddhist Community	2
16	PGI	2
	Total	**367**

Considered as the degrading incidents for self-integrity and the basic freedom, violation of freedom of religion/belief had created impacts to the followers. To the children of Ahmadiyah community, for example, the sealing of school and forced discontinuation of learning process had created trauma and was kept in their collective memory.

The Ahmadiyah refugees who at this moment reside in Transito Mataram House until now have not received serious attention from the local government.[42] The last observation in Transito Mataram House which has become an Ahmadiyah shelter showed that the Ahmadiyah community was in appalling

[42] Investigation was carried out by SETARA Institute observation in December 12, 2008. The interviews were performed to several refugees, such as Ahmad Jauzi and Udin, refugees from East Lombok.

condition. Up to their three (3) years of being refugees, the government has not fulfilled their basic rights as refugees. There were 140 refugees there, received only 2 tons of rice every 4 months. It meant that each person received 100 grams of rice per day. That was the only thing being consumed by the Ahmadiyah refugees. Generally, the refugees were still unemployed because of having the difficulties in finding a job. Most of them worked by giving transportation service *(ojek)* or as construction labors.

Another impact of violations of freedom of religion/belief in West Nusa Tenggara is that, some of 35 of the 140 refugees that were still the age of school were no longer attending school due to lack of money. The children of Ahmadiyah studied around the refugee area were also labeled as Ahmadiyah children on their study report. Due to objections from many parties, the labeling is no longer carried out.

Referring to the report of National Commission on Violence Against Women *(Komnas Perempuan*) on Ahmadiyah Women: Victims of Layered Discrimination (May 2008), Ahmadiyah women, especially in West Nusa Tenggara, experienced layered discrimination. Gender-based discrimination identified in the report showed that violations of freedom of religion created a chain effect. The main finding of Komnas Perempuan was that Ahmadiyah women suffered layered discrimination, due to their being as women as well as their being as members of the minority group being the target of attack. Ahmadiyah women suffered gender-based human rights violations besides violations that were also experienced by men in Ahmadiyah community. The additional violations experienced by Ahmadiyah women were violations of the right to be free from gender-based violence,

the right to form a family and reproduction, the right of decent livelihood, and the right of healthy reproduction.[43]

Al Qiyadah al Islamiyah Community who in 2007 suffered a lot of violence, after the judge gave verdict to their leader, Ahmad Moshaddeq, the followers including the leader generally stated that they had “repented” and no longer suffered serious violence.

The repression and discrimination conducted by the State to religious group and faith commonly has eroded the basic rights of citizens to have his/her freedom to practice his/her religion. Ahmadiyah community, after the attack, burning, and confiscation, still performs their religion, even though they minimize religious practices which invite huge public attention.

There was a specific case targeted to woman in 2008, which is the ban of using headscarf by the Mitra Hospital Bekasi. An employee named Wine Dwi Mandela at the end was unemployed because she refused to remove her headscarf. The hospital then cancelled its decision and let Wine back to her employment, but she is no longer there working there. This case is a form of discrimination based on religious faith and because the person is a woman.

On top of all, the various violations of freedom of religion/ belief showing that the State takes side and acts intolerantly have increased the social capital of the religious organizations which so far have actively acted intolerantly and used the force

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[43] *Komnas Perempuan,* Report on Human Rights observation of National Commission Ahmadiyah Women and Children: Victims of Layered Discriminations, Jakarta, May 22, 2008

of violence. The state's partiality is strengthening the domination of religious logics and morality, majority versus minority in the relation between citizens.

3.4. BIAS OF CONSTITUTIONAL INTERPRETATION TO THE ASSURANCE OF FREEDOM OF RELIGION/BELIEF

The constructive steps to guarantee the right of freedom of religion/belief have been started since the Amendment of Constitution 1945. Constitutionally, the right of freedom of religion/belief in Indonesia has a strong guarantee because it is enshrined in the Constitution of 1945, the highest reference in the life of nation and state.

In the Constitution 1945, Article 28E states:

(1) Every person is free to have or to adopt a religion and to pray according to the religion, to choose education and teaching, to choose citizenship, to choose a place to stay inside the state territorial and to leave it, and to return.

(2) Every person has the right to the freedom of having faith in his/her belief, declares thought and attitude, according to one's conscience.

The Article, which was produced in the Second Amendment of the Constitution 1945, in August 2000, is a form of acceptance from the State for the universal principles of human rights that previously have not been accommodated yet by the Constitution 1945. This principle in the Constitution 1945 has emphasized that the decision of having religion/belief is on the citizen's shoulder individually. The State has been able to underline the paradigm that religion/belief is an individual matter, not State's. Using such a paradigm, State has no right to

interfere in terms of akidah (basics of beliefs), religious practice, the citizen's religious law (Sharia).[44] The view also clarifies the positive rights doctrine of civil rights and political rights in human rights law. The guarantee of freedom of religion/belief in Constitution 1945 is also in accordance with International Covenant on Civil and Political Rights that has been ratified by Indonesian government under the Law No. 12/2005 on the Ratification of International Covenant on Civil and Political Rights, and in accordance with UN Declaration 1981 on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

Adversely, the guarantee provided in Article 28E has been reduced due to the bias of interpretation of Article 29 paragraph (1), which states, "The State is based on the one God". This article, on the implementation, has been interpreted as unfavorable to the guarantee of freedom of religion/belief. Article 29 of Constitution 1945 is the article which becomes the juridical base for the production of various laws restrictive to guarantee of freedom of religion/belief.

This Article strictly stated that Indonesia is a country oriented to one God. This is a form of political declaration that Indonesia

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[44] In the context of private room, religion is being understood at the range of moral and religious values. Concepts such as meaning of life, religious belief, life perfection could vary and considered unable to have basic of rational and universal consensus. Question about "good life" does not need necessarily be answered by political institutions, but it should actually be answered by individual or community in the society. See Dr. Fransisco Budi Hardiman, A*gama dalam Ketegangan antara Ruang Publik dan Ruang Privat, seminar paper* on March 8 2002, ICRP Jakarta

is not a secular state or religious country.[45] This article is the only chapter unrevised in the constitutional reform 1999-2002. On the form of religious country or secular country, ambiguity was also stated by the verdict of Constitutional Court, which had reviewed Law No. 3/2006 on the Religious Court. In the consideration of its decision, it mentioned that Indonesia is not a religious country but also not a secular country.[46] Nevertheless, in the religious/belief life, Indonesia keeps showing its religious face rather than its secular face. Moreover, Article 28J paragraph (2) of Constitution 1945 explicitly emphasizes:

> "In conducting its right and freedom, everyone has the obligation to obey the limitation set by the law in order to assure the acknowledgement and the honor of other people's right of freedom and to fulfill the fair demand according to moral consideration, religious values, security, and public order in a democratic society."

With the mentioned clause, all guarantees of freedom of religion/belief including the guarantee of other human rights in the Constitution are highly potential to be collection of silent

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[45] In their research on relation and role of constitution in the freedom of religion, Tad Stahnke dan Robert C. Blitt (2005) grouped majority Moslem countries as four categories. The four categories are: (1) countries that declare themselves as an Islamic country such as Afganistan, Iran, and Saudi Arabia; (2) countries that stated Islam is the official state religion such as Irak, Malaysia, and Mesir; (3) countries that declared themselves as secular countries such as Senegal, Tajikistan, dan Turkey; also (4) they who do not declare anything in their constitutions such as Indonesia, Sudan, and Syria. See Pan Mohamad Faiz, *Constitutional Review dan Perlindungan Kebebasan Beragama*, http://jurnalhukum.blogspot.com/2007/10, accessed in July 18, 2008

[46] Komnas Perempuan (2008) indentified this as a form of constitutional contradiction that as well highlight the politics of limiting human rights.

articles that cannot be used as the protector of the citizen rights.[47]

This report sees that the formula as enshrined in Article 28J paragraph 2 is a form of limitation of the regular principles of limitation of human rights. On the contrary, as aforementioned in the Article 4 of International Covenant on Civil and Political Rights, the limitation of human rights is only allowed if the reasonable reasons in the human rights discipline.

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Thus, it is not allowed for any country to derogate, limit or neglect the fulfillment of rights assured by the Covenant on Civil

[47] See the Minutes of Constitution Court in the judicial review of Law No. 3/ 2006 on Religious Court, Case No 19/VI/PUU/2008, Tuesday, August 12, 2008.

and Political Rights. Although the limiting should be made, only and if only the cumulative requirements set by the Covenant are fulfilled by the referred state. The referred cumulative requirements are first, as long as there's a case of emergency which is officially proclaimed which threatens the life of state; second, the postponement or the limitation should not be based on discrimination of race, colors, sex, language, religion or social origin; and third, the referred limitation and postponement should be reported to the United Nations.

Of all the cumulative requirements previously mentioned, there is no requirement fulfilled by the practice of limitation of freedom of religion/belief in Indonesia. In that sense, construction of Article 28J paragraph 2 including the implementation of Article 29 of Constitution of Republic of Indonesia will always create constitutional problems.

Based on the bias interpretation, the State produced a couple of laws, (see table 6) which keep on limiting the freedom of religion/belief.

Those policies have become the State's operational standard in limiting religion admitted by the Government.[48] The implication at the operational level is that the State supports and gives more facility to the declared religions (favoritism);

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[48] In Presidential Decree No. 27/ 1978 on the establishment of *Direktorat Pembinaan Penghayat Kepercayaan terhadap Tuhan YME* (Directorate of Developing Believer of One God) under the Directorate General of Education and Culture. See ICRP, *Peminggiran di seberang Pengakuan, Sebuah penelitian yang Melihat Sejauh Mana perhatian Negara Terhadap Eksistensi Agama-agama dan Penganut Penghayat Kepercayaan terhadap Tuhan YME di Indonesia,* 2005, page. 22.

meanwhile, to the undeclared religions/beliefs, the State gives limitation, even repression and administratively categorizes them as part of cultural form.

Table 6:
List of Restrictive Laws (1)

No.	Type of Law/Policy
1	Law No. 1/PnPs/1965 about the Prevention, Misused, and/or Disgraced of Religion which later become Law No. 5 Year 1969 Act No. 1 Year 1965
2	Tap MPRS No. XXV/MPRS/1966 on the Dissolution of Indonesian Communist Party
3	Tap MPRS No. XXVII/ MPRS/1966 about Religion, Education, and Culture
4	Circular Letter of Attorney-General of RI No. B.523/C/8/1969 dated August 16, 1969 concerning the Basic Regulations of Freezing the Sects/Beliefs/Spiritual/and Shamanism
5	Circular Letter of Attorney-General of RI No. B.170/B.2/1/1973 dated 30 January 1973 on Ban Concerning Spiritual Sect/Belief
6	Circular Letter of Minister of Home Affairs No. 477/74054/BA.01.2/4683/95 (November 18, 1978) on Acknowledgement of Religions declared by the Government
7	Instruction of Minister of Religious Affairs No. 4 Year 1978 concerning Ban of Believer of One God
8	Instruction of Minister of Religious Affairs No.8 Year 1979 on Establishment, Guidance, and Monitoring on Organization and Islamic sect opposing the Islamic teaching
9	Decree of Attorney-General No. Kep-108/JA/1984 concerning the forming of Coordinating Monitoring Team for Belief Sects in Society

In providing the support to the declared religion by the State, the State established bodies and organizations which deal with the religious matter under the Department of Religious Affairs, Department of Home Affairs, Department of Education and Culture (now is Department of National Education), Attorney-General and Police Department. AT the operational level, the State established Coordinating Body of the Monitoring of Religion and Belief *(Bakor Pakem),* on January 15, 1994 based on KEPJA No. KEP-004/JA/01/1995. This body has the authority to supervise the existence of organizations and groups of religions/ beliefs. This body consisted of elements of Attorney, police department, Department of Religious Affairs, Department of Home Affairs, Department of Culture and Tourism, Department of Law and Human Rights, and national army.[49]

Other elements claimed by the government as authoritative and representative body from each acknowledged religion are independent bodies such as *MUI, WALUBI, PGI, KWI,* and *HINDUDHARMA.* These bodies are not State bodies administratively, but established as a process of Government's political support.[50] These bodies then are often called as State corporative organizations.

The representative body of certain religion, for instance MUI, established 1975, in its development influences the

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[49] Ibid, page 26. See also Uli Parulian Sihombing, et.al., Menggugat BAKOR PAKEM: Kajian Hukum terhadap Pengawasan Agama dan Kepercayaan di Indonesia, ILRC, Jakarta 2008.

[50] M. Amin Abdullah, MUI, *Fatwa dan Otoritas Keagamaan di Indonesia, Seminar: Kritik atas Kebebasan Beragama di Indonesia, Pusat Penelitian Kemasyarakatan dan Kebudayaan (PMB), Lembaga Ilmu Pengetahun Indonesia* (LIPI), Jakarta, September 25, 2005.

religious-social life widely in the society in matters related with freedom of religion/belief through fatwas issued by them.[51]

The State also issued legal products which control operationally matters related with stability of security and order, such as:

Table7:

List of Restrictive Laws (2)

No.	Type of Law/Policy
1	Presidential Decree No. 4 PNPS Year 1963 that: Attorney-General has the right of to ban the circulation of print material considered disturbing public order.
2	Presidential Instruction No. 14 Year 1967 on Religion, Belief, and Chinese Culture, followed by Joint Ministerial Decree, Minister of Religious Affairs, Minister of Home Affairs, Attorney-General on the Guidance of Practicing Presidential Instruction No. 14/1967 on Religion, Belied, and Chinese Culture [52]
3	Joint Ministerial Decree of Minister of Religious Affairs and Minister of Home Affairs No. 08 and No. 09/ 2006 concerning the Guidance of Practicing the Duty of Regional Head/Vice Regional Head in Maintaining Forum for Religious Harmony (FKUB), Empowerment of Forum for Religious Harmony (FKUB), Establishment of Place of Worship

Joint Ministerial Decree of Minister of Religious Affairs and Minister of Home Affairs No. 08 and No. 09/ 2006 substantively

[51] http://www.mui.or.id/mui_in/about.php, accessed on September 14, 2008.

[52] Legal products specifically related with Chinese and Kong Hu Chu has been revoked by the Presidential Decree No. No. 6 Year 2000 on Revoking the Presidential Instruction No. 14 Year 1967 on Religion, Belief, and Chinese Culture.

are considered by many elements as a compromised point between individual rights and communitarian rights to create harmonious religious community, and it is allowed in the human rights discipline. On the other side, its implementation on the field often creates barriers for the religious followers to build places of worship. Quantitative consideration of the followers in giving permit to the establishment of place of worship is not in accordance with the guarantee of freedom of religion/ belief. The basic problem of Joint Ministerial Decree is that there is no guarantee that other religion/belief can develop, unless they are a part of Forum for Religious Harmony (FKUB). Even between the State's "acknowledged" religions, there are several problems concerning the representation of followers.

Due to many religious leaders, Joint Ministerial Decree is one of the very important breakthroughs and instruments of keeping the harmony. The harmony in several regions is admitted as a result of the existence of Forum for Religious Harmony (FKUB) as mandated by Joint Ministerial Decree. However, the weak support from the government on the existence and operation of Joint Ministerial Decree caused FKUB to be not able to work optimally.[53]

The intervening character of the State in the religious/belief life should not be performed in the context of limitation. The suitable intervention of the State is by guaranteeing the freedom of religion/belief, including in guaranteeing the followers to practice its religion freely. Thus, what needed are not restrictive, discriminative, and repressive laws but the laws that guarantee the freedom of religion/ belief.

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[53] FGD initiated by SETARA Institute in 5 regions recorded that FKUB in the perspective of religious figures is an important breakthrough.

Until now, all products of law and policy mentioned above are still effectively used by the Government in limiting other religion/belief.

Related to the Ahmadiyah community, State repression also developed in several policies which mainly banning Ahmadiyah, both in the form of Circular Letter and also Decree of Regent, in several regions.[54]

Besides the above law products, as previously mentioned in the Annual Report SETARA Institute 2007, this report noted, in legislative aspect, constitutional interpretation bias also resulted Law No. 42/2008 on Pornography which places women as object of criminalization and deprive the civil freedom of citizens.

Meanwhile, the repressive and discriminative policies enacted in 2008, i.e. [1] Joint Ministerial Decree of Three Ministers No. 3 Year 2008, No.: KEP-033/A/JA/6/2008, No. 199 Year 2008 concerning Warning and Order to the Followers, Members, and/or Board Members of Jamaah Ahmadiyah Congregation (J*emaat Ahmadiyah Indonesia*/JAI) and Citizens; [2] Decree of Governor of South Sumatra No. 563/ KPTS/ BAN.KESBANGPOL & LINMAS/ 2008, and [3] Recommendation of Pakem of Padang Municipal to Mayor of Padang dated November 20, 2008, on Prohibition and Removal of Board Name of Ahmadiyah in Padang Municipality.

At the regional level, this monitoring did not record discriminative local regulations, including local regulations in the form of women criminalization, control of women's body, local

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[54] *Komnas Perempuan*, Report on Human Rights Monitoring of National Commission on Violence Against Women, Ahmadiyah Women and Children: Victims of Layered Discriminations, Jakarta, May 22, 2008, p. 46.

regulations based on morality and religion,[55] discriminative to other religions were issued.[56] The report also noticed, the Central Government, especially Department of Law and Human Rights which has preventive authority, Department of Home Affairs which has evaluative and repressive authority, and Supreme Court which has repressive authority through the judicial review have not been able to create the effective mechanism to ensure the consistency of local regulations to higher legislations, including the Constitution.

The related reviews on law and policy which erode the guarantee of freedom of religion/belief, including discriminative local regulations, point to a conclusion: that religion and State relation in life of State and nation until now is still a debate. Once again, in the Indonesian Constitution, there is no strict clause on state vis-à-vis religion. Even one article could negate another article, due to the State's political interpretation and unfavorable limitation in human rights framework. Map on State's interpretational bias aforementioned is the basic trigger of and formal justification to the entire violation of freedom of religion/belief in Indonesia.

Constitutional Court of Republic of Indonesia, as a body which has constitutional authority to interpret the constitution,

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[55] Category of regional regulation introduced by Women National Commission. See *Komnas Perempuan, 10 Tahun Reformasi: Kemajuan dan Kemunduran Perjuangan Melawan Kekerasan dan Diskriminasi Berbasis Jender,* Annual Report Violence on Women Kekerasan 2007, March 2008

[56] Report of The Wahid Institute, 2008 recorded there were 4 regulation in regional level, formed based on morality and religion. See also Menapaki Bangsa yang Kian Retak, Annual Report Religion/ Belief Pluralism in Indonesia, The Wahid Institute 2008.

through the judicial review of Law No. 3/2006 concerning Religious Court, actually has preserved and emphasized the constitutional problem attached in Constitution 1945.

3.5. BREAKTHROUGH

In 2008, there was no significant breakthrough initiated by the State to provide guarantee of freedom of religion/belief in Indonesia. The tendency shown was even worse than the previous year.

A political statement which declaratively emphasizing Government's commitment to provide guarantee of freedom of religion/belief was the statement of President Susilo Bambang Yudhoyono, after the attack from Islamic Defender Movement (FPI) to the peace act of National Alliance for Freedom of Religion and Belief (AKKBB) on June 1, 2008. The President stated:

> "Our state is a lawful state which has constitution, law, and regulation. Not a violent state. Due to yesterday's related incident, I ask for the law to be enforced. The perpetrators should be processed legally and received their sanctions. This shows that the State is not allowed to be inferior in front of violence. State should enforce the existing order for the sake of the entire Indonesian society's interest."[57]

The Government's response to the June 1, 2008 incident should be admitted as political support to Indonesian Police to solve the violence based on the issue of freedom of religion/ belief. Verdict to Rizieq Shihab and Munarman as actors of

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[57] President statement, stated on June 2, 2008, in Jakarta. The statement is quoted in most of national media. Read as well, Kompas, "*Negara tidak boleh Kalah*", June 3, 2008.

violence has weakened the social capital of the FPI movement and similar movement. However, Government's choice to enact Joint Ministerial Decree Restricting Ahmadiyah, happened 8 days after this response, re-strengthens the social capital of Islamic movement who repressed the Government to dissolve Ahmadiyah.

On Christmas celebration 2008,[58] President Susilo Bambang Yudhoyono also expressed his commitment by stating that the differences as social reality in Indonesia should be respected with ease. In the differences, we should keep developing our tolerance, appreciating each other, and respecting each other. "Indonesia is plural nation from the perspective of religion, tribe, ethnic, origin, and language. If managed correctly, the pluralism would lead Indonesia to own great and glorious civilization, and well respected by the world."

Besides the State's initiatives, this report recorded, in a decade, civil society organizations concerning on the issue of guarantee of freedom of religion/belief, pluralism, and multiculturalism were growing up in number. Such organizations were not only growing up in Jakarta, but were disseminated in many regions as well.

Several intellectual alliances were also established to promote a more tolerant life. Besides the university based organizations which consist of progressive professors, inter-student network, with the concentration of freedom of religion/belief study were also started to grow again.[]

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[58] The President's statement was addressed in National Christmas Celebration 2008. See Kompas, December 28, 2008.

4
RESPONSIBILITY OF STATE

The responsibility of State in fulfilling of right of freedom of religion/belief as enshrined in the Constitution and national law of Indonesia are, among others:

Constitution 1945, Article 29: The State guarantees the freedom of every resident to adopt a religion and to practice his/her religion and belief.

Constitution 1945, Article 281 paragraph 4: The protection, promotion, enforcement and fulfillment of human rights are the responsibilities of State, particularly Government.

Law No. 39 Year 1999 on Human Rights, Article 71: The Government is obliged and responsible to respect, protect, enforce and promote human rights as regulated in this law, other legislations, and international laws on human rights which have been accepted by the State of the Republic of Indonesia.

Law No. 12 Year 2005 on the Ratification of International Covenant on Civil and Political Rights, Article 2: The State respects and provides guarantee to every individual living in

its area and subject to its jurisdiction on rights as stated in the Covenant without any discrimination, such as based on race, color of skin, sex, language, religion, political or other views, social origin or nationality, property, birth, or other status.

Law No. 5 Year 1998 on the Ratification of Convention Against Torture, Article 16: The State will take measures to prevent the happening of any forms of cruel, inhuman or degrading treatment or punishment in its jurisdiction… when the actions were conducted by and were triggered by or with permission or support from a public official or other person that acts in his/her capacity as a public official.

As a State party of Convention Against Torture, the Government of Indonesia had reported its work in implementing articles of the Convention in May 2008 to Committee Against Torture, UN High Commission on Human Rights, in Geneva. On the comments of Government of Indonesia on the situation of Ahmadiyah community, Committee Against Torture gave its Concluding Observations, particularly related with the role of Police as protector of society, Attorney-General as the following:[59]

> "... Further, there are persistent disturbing allegations of routine failure to investigate such violence and the reluctance on the part of the police and authorities to provide Ahmadiyah with adequate protection or to conduct prompt, impartial and effective investigations into such acts. The Committee is especially concerned that the Attorney-General has announced

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[59] Concluding observations of the Committee against Torture, in the 40th Session of Committee Against Torture, April 28 – May 16, 2008, CAT/C/IDN/CO/2, article 19. *Diskriminasi Berlapis: Kondisi HAM Perempuan Ahmadiyah*, May 2008, p. 30.

> plans to make public a joint ministerial decree that will criminalize the activities of the Ahmadiyah… The Committee is especially concerned that State party officials who may authorize a decree banning the Ahmadiyah, thereby putting members of this community at further riskof ill-treatment and physical abuse, are also expressing the view that the Ahmadiyah must refrain from 'provoking' members of the community – in effect blaming the group at risk. (articles 2, 12 and 16)."

Further, Committee Against Torture gave specific recommendations to Government of Indonesia to:[60]

- ensure the protection of members of groups especially at risk of being ill-treated, by prosecuting and punishing all acts of violence and abuses against these individuals and ensuring implementation of positive measures of prevention and protection;
- ensure prompt, impartial and effective investigations into all ethnically motivated violence and discrimination, including that directed against persons belonging to ethnic and religious minorities, and prosecute and punish perpetrators with penalties appropriate to the nature of their acts;
- condemn hate crimes and other violent acts of racial discrimination and related violence and should work to eradicate incitement and any role public officials or law enforcement personnel might have in consenting or acquiescing in such violence. It should ensure that officials are held accountable for action or inaction which breaches the Convention.[]

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[60] *Ibid.*, p. 31.

5
CONCLUSION & RECOMMENDATION

5.1. CONCLUSION

1. In 2008, SETARA Institute recorded 367 violations of freedom of religion/belief in 265 incidents. Most of the incidents happened in June (103 incidents). Last June was the month when the urge and persecutions to Ahmadiyah escalated highly, both as the call to the government to issue Presidential Decree on the Dissolution of Ahmadiyah and as the serious impact of Joint Ministerial Decree (SKB) on the Restriction of Ahmadiyah.
2. The incidents of violations of freedom of religion/belief peaked in June 2008. If the incidents related to Ahmadiyah are excluded from the account, the amount of incidents of violations to freedom of religion/belief is actually quiet moderate. This fact shows that the incidents of violations of freedom of religion/belief in 2008 were mostly triggered by the Joint Ministerial Decree on the Restriction of Ahmadiyah.

3. As seen in areas in which incidents of violations happened, three provinces showed high number of violations compared with others: West Java (73 incidents), West Sumatra (56 incidents) and Jakarta (45 incidents). These three provinces have low rate of tolerance as well as high potential of religious conflict.
4. From 367 violation acts of freedom of religion/belief, there were 188 violations which involved the State as the actor, 99 acts by commission as well as 89 acts by omission. For violations in which the State is the actor, the legal responsibility is found in the human rights law, which binds the State due to ratification of various covenants and conventions. State institutions which make the most violations are Police (121), Regent/Mayor (28), Court (26), and Provincial Legislative Assembly (26).
5. From 367 violations, 88 of them were criminal acts conducted by citizens and 91 were intolerance by individuals/members of society. The category of crime and intolerance are forms of violation to criminal laws in which the responsibility lies on the individuals as the legal subjects. The perpetrators of violations in this category were, as recorded, MUI (42), FPI (27), FUI, KPSI, MMI (each 12), other Islamic mass organizations (55), unidentified groups (59), and individuals (20).
6. From the 367 violations, until the beginning of 2009, the State has not taken any action, other than tries Rizieq Shihab and Munarman on the incident of June 1 at Monas.
7. The violations of freedom of religion/belief in 2008 mostly

addressed to the followers of Ahmadiyah (238), as in becoming the victims of intolerance, repression by the State, by omission, and crimes done by citizens/communities in the society. The number was followed by individuals (48), followers of other religion/belief (15), and Christians (15).

8. In 2008, the freedom of religion/belief has also been failed to regain complete recognition from the Constitution due to the bias in constitutional interpretation which were still preserved by the political elites of the State. At the same time, the State produced policies which legalize the uniformity acts using religious disgrace and defamation as the reason. In legislations, other than existing restrictive legislations and policies, in 2008 there were 1 legislation issued based on morality and religion (Law No. 42/2008 on Pornography) and 3 policies which restrict and reduce the assurance to freedom of religion/belief: Joint Ministerial Decree on the Restriction of Ahmadiyah, Decision Letter of Governor of South Sumatra on the Prohibition of Ahmadiyah, and Recommendation of Monitoring Body of Religion and Belief (Pakem) of Padang Municipality to the Mayor of Padang dated on November 20, 2008 on the Prohibition and Removal of Ahmadiyah Board Name in Padang Municipality.

9. In relation with local regulations which are discriminative to gender and contradicts human rights, the Central Government, particularly Department of Law and Human Rights which has the preventive authority, Department of Home Affairs which has the evaluative and repressive authority, and Supreme Court which has the repressive

authority through judicial review, have not been able to create an effective mechanism to ensure the local regulations are consistent with higher legislations, including with the Constitution.

10. Constitutional problems related to the freedom of religion/ belief were triggered by and derived from the interpretation bias of Article 29 (2) of the Constitution, and limitation of guarantee of freedom in Article 28J (2), which is not common in the human rights framework. The State's bias interpretation and the uncommon limitation have become the essential trigger and the formal legalization to all incidents of violations of freedom of religion/belief in Indonesia.

11. From the findings of monitoring, there was no significant change on legislations/policies which strengthens the guarantee of freedom of religion/belief. There were only two statements by President Susilo Bambang Yudhoyono which were able to be noted as significant declarative breakthroughs to the strengthening of guarantee of freedom of religion/belief: first, his statement and commitment to complete the case trial of attack by Islamic groups against AKKBB, June 1, at Monas; and second, his statement of recognition to diversity and intention to preserve it, as stated in the Christmas Celebration 2008.

12. The report showed that the rate of intolerance in the society as well as in the State body, through the State apparatuses, was getting stronger; on the other hand, the tolerance was getting weaker. The indicators were the increase of numbers

of incidents and violations of freedom of religion/belief, the State's political choice on the restriction of religious sects, and the dispersion of actors that were expanding. If in 2007 perpetrators of crimes were limited to a few numbers of radical Islamic organizations, in 2008 the perpetrators were expanded to individuals or groups without identity that sporadically did crimes and intolerance.

13. Other than the anxiety of worsening condition of freedom of religion/belief, the growth and strengthening of civil society organizations promoting freedom of religion/belief have strengthened the defenders of freedom of religion/ belief.

14. The State actually has the authority and competence to ensure the freedom of religion/belief. The minus capacity of the government to act firmly and ensure this freedom has hauled the State to side and to act intolerantly and discriminative by making restrictions through a couple of policies issued. The ambiguity of the State's role in ensuring the freedom of religion/belief has also showed that the State's elites have and will always undertake religious politicization, in which every position they do and the acts they take will depend on how great the image will be polished and how great the support will be gained. In the middle of political contestation of General Election 2009, all parties will choose issues that are less likely to create political disadvantage; and on the other hand, will exploit issues that are more likely to create political advantage.

15. Vulnerabilities at the local level in responding the Central

Government's policies related to freedom of religion/belief showed that politicization of religion has also been used as the contestation area for political elites at the local level. At the same time, findings of this monitoring showed the rate of political education in the society was low, so they were vulnerable to be politicized.

16. The State has not been able to fulfill its promise to ratify various human rights covenants and conventions that are already legally binding, which is proved by conserving various legislations that are formally and substantially illegal as they are not in line with human rights principles.

5.2. RECOMMENDATION

12. The President and the Parliament (MPR) should consider the urgency to amend the Constitution in order to perfect the guarantee of Constitutional rights of citizens, including guarantee of freedom of religion/belief.
13. The President should revoke Joint Ministerial Decree on the Restriction of Ahmadiyah because formally and substantially this policy is clearly in contradiction to legislations, including and above all in contradiction with the Constitution. The Joint Ministerial Decree has obviously escalated violations of freedom of religion/belief in 2008.
14. The President and the House of Representatives (DPR) should immediately change various legislations which restrict the freedom of religion/belief. The Government and the Parliament should also harmonize legislations with the ratified covenants and conventions, particularly those

related to the freedom of religion/belief.

15. The President and the House of Representatives (DPR) should put in consideration the importance of a law on Anti Religious Intolerance by conducting academic review and preparing the draft of law.
16. Police of the Republic Indonesia must without exception provides protection to every citizen who experiences violence as a result of persecution and intolerance. Indonesian Police should also increase the human rights education and their apparatuses' capacity, particularly in the context of providing guarantee of freedom of religion/ belief.
17. The President or representing Minister should evaluate the implementation of Joint Ministerial Regulation No. 08 and No. 09/2006 on the Implementation Guide for Head/Vice-head of Local Area in the Maintenance of the Harmony between Religious Society, the Empowerment of the Forum for Religious Harmony (FKUB), the Building of Religious Place of Worship.
18. Department of Home Affairs and Department of Law and Human Rights should immediately establish a holistic mechanism in order to prevent and evaluate local regulations that are gender discriminative and in contradiction with human rights, including with the constitution.
19. Political parties should integrate the issue of freedom of religion/belief and inclusive religious practices in their party's political agendas, as political parties also have the

obligation of the fulfillment of human rights.

20. Political parties and other political elements should stop the practices of religious politicization which is aimed to gather public supports to choose them in every political contestation discourse.

21. The follower of religion/belief should utilize the Forum for Religious Harmony (Forum Kerukunan Umat Beragama – FKUB) as a dialogue forum in solving the problems of freedom of religion/belief and strengthening the climate of tolerance. Bureaucratization of FKUB in giving permission of establishing place of worship shall be returned to the followers of religion/belief, to establish place of worship freely.

22. Society, leaders in society, and academicians should promote the re-strengthening of tolerance which became the social modal of the nation in the past, which at this moment has been eroded by various social changes. The development of education on citizenship, universal religiosity, and conscience is needed.[]